

A NONSUBSTANTIVE REVISION
OF STATUTES RELATING TO
THE LICENSURE OF INSURERS AND RELATED ENTITIES,
LIFE INSURANCE, AND CERTAIN GROUP BENEFIT PROGRAMS
FOR GOVERNMENTAL EMPLOYEES

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CHAPTER 801. CERTIFICATE OF AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

- Sec. 801.001. DEFINITIONS. In this chapter:
- (1) "Control" has the meaning described by Section 823.005.
 - (2) "Insurer" means the issuer of an insurance policy

that is issued to another in consideration of a premium and that insures against a loss that may be insured against under the law. The term includes a:

- (A) fraternal benefit society;
- (B) Lloyd's plan;
- (C) mutual company of any kind, including a:
 - (i) statewide mutual assessment association;
 - (ii) local mutual aid association or burial association; and
 - (iii) county or farm mutual insurance company;
- (D) reciprocal or interinsurance exchange; and
- (E) stock company.

(3) "Person" has the meaning assigned by Section 823.002. (V.T.I.C. Art. 1.14, Secs. 2 (part), 3 (part).)

Source Law

Sec. 2. The word "Carrier" as herein used is defined as that type of insurer which, in consideration of premium, issues policies to others insuring against those losses which may be insured against under the provisions of the law, including stock companies, reciprocals or inter-insurance exchanges, Lloyds' associations, fraternal benefit societies and mutual companies of all kinds, including state-wide assessment associations, local mutual aids, burial associations, and county and farm mutual fire associations. . . .

Sec. 3. . . . As used in this section, "control" and "person" have the meanings assigned by Section 2, Article 21.49-1 of this code. . . .

Revisor's Note

(1) Section 2, V.T.I.C. Article 1.14, defines "carrier." The revised law substitutes "insurer" for "carrier" for consistency of terms in this chapter and because "insurer" is the more commonly used modern term. Throughout this chapter, references to "carrier" have been changed appropriately.

(2) Section 2, V.T.I.C. Article 1.14, in the definition of "carrier," revised in this section as the definition of "insurer," refers to county and farm mutual fire associations. The revised law omits the reference to "fire" because Section 2 applies to mutual companies "of all kinds." It is clear, therefore, that all kinds of county and farm mutual insurance companies are included in the meaning of the defined term.

Revised Law

Sec. 801.002. EXEMPTION FOR CERTAIN FRATERNAL BENEFIT SOCIETIES. This chapter does not apply to a fraternal benefit society that:

(1) sells insurance policies only as an incidental benefit to its members; and

(2) on September 6, 1955, was:

(A) organized and licensed by the department as a fraternal benefit society; or

(B) exempt under former Article 10.12 or 10.38, revised as Section 885.004. (V.T.I.C. Art. 1.14, Sec. 3 (part).)

Source Law

Sec. 3. . . . Provided, however, that fraternal benefit societies that sell insurance policies only as an incidental benefit to their members and which are now so organized and licensed by the Board of Insurance Commissioners of Texas or which are now exempt under the provisions of Article 10.12 or Article 10.38 of the Insurance Code are hereby exempted from the provisions of this Act.

Revisor's Note

(1) Section 3, V.T.I.C. Article 1.14, exempts from the application of V.T.I.C. Article 1.14, revised in part as this chapter, certain fraternal benefit societies that are "now" organized and licensed by the Texas Department of Insurance or "now" exempt under Article 10.12 or 10.38, Insurance Code. Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, added Section 3 to V.T.I.C. Article 1.14 and was effective

September 6, 1955. The revised law substitutes "September 6, 1955," for the references to "now."

(2) Section 3, V.T.I.C. Article 1.14, refers to the "Board of Insurance Commissioners of Texas." Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and Texas Department of Insurance, respectively. Throughout this chapter, references to the Board of Insurance Commissioners and the State Board of Insurance have been changed appropriately.

[Sections 801.003-801.050 reserved for expansion]

SUBCHAPTER B. CERTIFICATE OF AUTHORITY

Revised Law

Sec. 801.051. ISSUANCE OF CERTIFICATE; ELIGIBILITY. The department shall issue under the department's seal a certificate of authority to act as an insurer to an applicant applying for the certificate if the department determines that the applicant has complied with the law. (V.T.I.C. Art. 1.14, Sec. 1 (part).)

Source Law

Sec. 1. . . . Should the State Board of Insurance be satisfied that any insurance carrier applying for a certificate of authority has in all respects fully complied with the law, it shall be its duty to issue to such carrier a certificate of authority, under its seal

Revisor's Note

Section 1, V.T.I.C. Article 1.14, prohibits certain persons from engaging in the business of insurance unless permitted by

statute. The revised law omits that part of Section 1 as unnecessary because it duplicates Section 101.102, Insurance Code (prohibiting a person from doing an act that constitutes the business of insurance except as authorized by statute). The omitted law reads:

Art. 1.14

Sec. 1. No individual, group of individuals, association or corporation, unless now or hereafter otherwise permitted by statute, shall be permitted to engage in the business of insuring others against those losses which may be insured against under the laws of this state. . . .

Revised Law

Sec. 801.052. EFFECT AND CONTENTS OF CERTIFICATE. A certificate of authority issued to an insurer under this chapter authorizes the insurer to engage in the business of insurance. The certificate of authority must state the specific kinds of insurance authorized under the certificate. (V.T.I.C. Art. 1.14, Sec. 1 (part).)

Source Law

Sec. 1. . . . a certificate of authority . . . authorizing such carrier to transact insurance business, naming therein the particular kinds of insurance. . . .

Revised Law

Sec. 801.053. DURATION OF CERTIFICATE. A certificate of authority issued to an insurer under this chapter is effective until it is suspended or revoked. (V.T.I.C. Art. 1.14, Sec. 1 (part).)

Source Law

Sec. 1. . . . Each such certificate of authority heretofore or hereafter issued shall be in full force and effect until it is revoked, canceled or suspended according to law;

Revisor's Note

(1) Section 1, V.T.I.C. Article 1.14, refers to a certificate "in full force and effect." The revised law omits the reference to "full force" because "in full force" is included in the meaning of "in effect."

(2) Section 1, V.T.I.C. Article 1.14, refers to a certificate of authority that is "revoked, canceled or suspended." Throughout this chapter, the revised law omits "canceled" because its meaning is included in the meaning of "revoked."

Revised Law

Sec. 801.054. PREFERENCE FOR DOMESTIC COMPANY. In issuing a certificate of authority to an applicant under this chapter, the department shall give preference to an application submitted by a domestic company. (V.T.I.C. Art. 1.14, Sec. 2 (part).)

Source Law

Sec. 2. . . . Provided that the Board of Insurance Commissioners shall give preference to applications of domestic companies in . . . issuing Certificates of Authority.

Revised Law

Sec. 801.055. DEPOSIT OF FEES. A fee collected by the department under this chapter for a certificate of authority shall be deposited to the credit of the Texas Department of Insurance operating account. (V.T.I.C. Art. 1.14, Sec. 1A.)

Source Law

Sec. 1A. Fees collected by the State Board of Insurance under this article for a certificate of authority shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

Revisor's Note

Section 1A, V.T.I.C. Article 1.14, requires fees to be deposited in the state treasury to the credit of the State Board of Insurance operating fund. Under the authority of Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.

Revised Law

Sec. 801.056. FAILURE TO PROVIDE COMPLETE SET OF FINGERPRINTS: GROUND FOR DENIAL OF APPLICATION. (a) In this section, "authorization" means any authorization issued by the department to engage in an activity regulated under this code, including:

- (1) a certificate of authority;
- (2) a certificate of registration;
- (3) a license; and
- (4) a permit.

(b) The department may deny an application for an authorization if the applicant or a corporate officer of the applicant fails to provide a complete set of fingerprints on request by the department. (V.T.I.C. Art. 1.10C, Subsec. (e) (part).)

Source Law

(e) The department may deny . . . an applicant for any license, permit, certificate of authority or certificate of registration who fails to provide a complete set of fingerprints on request and may deny a certificate of authority to an insurance company whose corporate officers fail to provide complete sets of fingerprints on request.

Revised Law

Sec. 801.057. FAILURE TO FILE ANNUAL STATEMENT: GROUND FOR REVOCATION OR SUSPENSION. A certificate of authority of an insurer that fails to file an annual statement required by law is subject to being suspended or revoked by the department. (V.T.I.C. Art. 1.14, Sec. 1 (part).)

Source Law

Sec. 1. . . . provided, however, that failure to file any annual statement required by law will subject the certificate of authority to being revoked, canceled or suspended.

[Sections 801.058-801.100 reserved for expansion]

SUBCHAPTER C. COMPETENCE, FITNESS, OR REPUTATION

Revised Law

Sec. 801.101. DEPARTMENT INQUIRY. The department may inquire into the competence, fitness, or reputation of:

- (1) an officer or director of an insurer; or
- (2) a person having control of an insurer. (V.T.I.C. Art. 1.14, Sec. 3 (part).)

Source Law

Sec. 3. The Board may inquire into the competence, fitness and reputation of the officers and directors of each carrier and of any person having control of such carrier. . . .

Revised Law

Sec. 801.102. DENIAL OF APPLICATION OR REVOCATION OF CERTIFICATE. If after conducting an inquiry under Section 801.101 the department determines that, based on substantial evidence, the person who is the subject of the inquiry is not worthy of the public confidence, the department shall, after written notice and hearing:

- (1) deny the application for a certificate of authority; or

(2) revoke the insurer's certificate of authority.
(V.T.I.C. Art. 1.14, Sec. 3 (part).)

Source Law

Sec. 3. . . . If, after inquiry, and based on substantial evidence, it shall appear to the Board that such officers, directors and any person having control of such carrier, or any of them, are not worthy of the public confidence, it shall give such carrier notice in writing [of its intention to refuse the application for Certificate of Authority, or to revoke the certificate once granted,]

After notice and hearing, [the Board shall . . . record . . . its findings and order,] which shall be subject to full review as provided by Article 1.04(f) of this code. . . .

Revisor's Note

(1) Section 3, V.T.I.C. Article 1.14, requires the Texas Department of Insurance to give notice of its intention to deny an application for a certificate of authority or to revoke a certificate of authority, but does not expressly require the department to deny the application or revoke the certificate. The revised law clarifies the department's duty to deny an application or revoke a certificate by including an express statement to that effect.

(2) Section 3, V.T.I.C. Article 1.14, includes certain notice and hearing procedures relating to the denial of an application for a certificate of authority or the revocation of a certificate of authority by the Texas Department of Insurance. In 1976, those provisions were impliedly repealed by the Administrative Procedure and Texas Register Act (Chapters 2001 and 2002, Government Code), which prescribes the procedures to be used by a state agency in denying an application or revoking a certificate. The original enactment of the Administrative Procedure and Texas Register Act repeals all conflicting law. The language in Section 3 relating to the notice and hearing procedures is omitted from the revised law because the enactment

of that language predates the administrative procedure law and is repealed. The omitted law reads:

Sec. 3. . . . [it shall give such carrier notice in writing] of its intention to refuse the application for Certificate of Authority, or to revoke the certificate once granted, stating specifically why the Board intends such action, and the place and time for hearing by the Board, not sooner than ten (10) days nor later than twenty (20) days thereafter.

[After notice and hearing,] the Board shall forthwith record in its official minutes its findings and order

(3) Section 3, V.T.I.C. Article 1.14, refers to the findings and order of the Texas Department of Insurance, "which shall be subject to full review as provided by Article 1.04(f) of this code." The revised law omits the quoted language as unnecessary because it duplicates the authority provided under Subchapter D, Chapter 36, Insurance Code, which was formerly V.T.I.C. Article 1.04.

[Sections 801.103-801.150 reserved for expansion]

SUBCHAPTER D. FELONY CONVICTION

Revised Law

Sec. 801.151. ISSUANCE OF CERTIFICATE PROHIBITED. Except as provided by Sections 801.153 and 801.154, the department may not issue a certificate of authority to an applicant if a corporate officer or member of the board of directors of the applicant has been convicted of a felony involving:

- (1) moral turpitude; or
- (2) breach of a fiduciary duty. (V.T.I.C. Art. 1.14A, Subsec. (a).)

Source Law

Art. 1.14A. (a) Except as provided by Subsection (c) of this section, the department may not issue a certificate of authority to an insurance company if a corporate officer or a member of the board of directors of the company has been convicted of a felony involving moral turpitude or breach of a

fiduciary duty.

Revised Law

Sec. 801.152. REVOCATION OF CERTIFICATE. After notice and hearing, the department may revoke the certificate of authority of an insurer if a corporate officer or member of the board of directors of the insurer is convicted of a felony involving:

- (1) moral turpitude; or
- (2) breach of a fiduciary duty. (V.T.I.C. Art. 1.14A, Subsec. (b).)

Source Law

(b) The department may, after notice and hearing, revoke the certificate of authority of an insurance company if a corporate officer or member of the board of directors of the company is convicted of a felony involving moral turpitude or breach of a fiduciary duty.

Revised Law

Sec. 801.153. PETITION FOR ISSUANCE OR REINSTATEMENT OF CERTIFICATE. A company may petition the commissioner for issuance or reinstatement of a certificate of authority of the company that is denied or revoked under this subchapter:

- (1) not earlier than the later of:
 - (A) the fifth anniversary of the date of the final conviction; or
 - (B) if the officer or director is sentenced to confinement or imprisonment or placed on community supervision, the fifth anniversary of the date the officer or director completes the sentence or period of community supervision; or
- (2) after the officer or director ceases to be an officer or director of the insurer. (V.T.I.C. Art. 1.14A, Subsecs. (c), (d) (part), (e).)

Source Law

(c) A company whose application for issuance of a certificate of authority has been denied under Subsection (a) of this section or whose certificate of authority has been revoked under Subsection (b) of this section may petition the commissioner for issuance or reinstatement of the certificate.

(d) Except as provided by Subsection (e) of this section, a petition for issuance or reinstatement of a certificate of authority may not be made before the date five years after the date of final conviction or, if the officer or director of the petitioner has been sentenced to prison or to probation, five years after the date the sentence or probation terminates. . . .

(e) A petition for issuance or reinstatement of a certificate of authority may be made at any time after the officer or director who has been convicted of a felony involving moral turpitude or breach of a fiduciary duty is no longer an officer or director of the company.

Revisor's Note

Subsection (d), V.T.I.C. Article 1.14A, refers to "probation." The revised law substitutes "community supervision" for "probation" because under Section 4.04(a), Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993, a reference in law to "probation" means "community supervision."

Revised Law

Sec. 801.154. GRANT OF PETITION. The commissioner shall grant a petition for issuance or reinstatement of a certificate of authority under this subchapter if the petitioner demonstrates that granting the petition would be in the public interest and that justice would best be served by granting the petition. (V.T.I.C. Art. 1.14A, Subsec. (f).)

Source Law

(f) The commissioner shall grant the petition if the petitioner demonstrates that it would be in the public interest and that justice would best be served if the certificate of authority were issued or reinstated.

Revised Law

Sec. 801.155. RULES RELATING TO CONTENTS OF PETITION. The department may adopt rules under this subchapter prescribing the contents of a petition for issuance or reinstatement of a certificate of authority. (V.T.I.C. Art. 1.14A, Subsec. (d) (part).)

Source Law

(d) . . . The board may adopt rules setting forth the contents of the petition.

CHAPTER 802. ANNUAL STATEMENT

SUBCHAPTER A. ANNUAL STATEMENT OF INSURANCE COMPANIES

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[Sections 802.004-802.050 reserved for expansion]

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CHAPTER 802. ANNUAL STATEMENT

SUBCHAPTER A. ANNUAL STATEMENT OF INSURANCE COMPANIES

Revised Law

Sec. 802.001. FORM OF ANNUAL STATEMENT. (a) The commissioner, as necessary to obtain an accurate indication of the company's condition and method of transacting business, may change the form of any annual statement required to be filed by any kind of insurance company.

(b) The form may require only information that relates to the business of the insurance company. (V.T.I.C. Art. 1.11, Subsec. (a) (part).)

Source Law

Art. 1.11. (a) The commissioner may, from time to time, make such changes in the forms of the annual statements required of insurance companies of any kind, as shall seem to it best adapted to elicit a true exhibit of their condition and methods of transacting business. Such form shall elicit only such information as shall pertain to the business of the company.

. . .

Revisor's Note

Subsection (a), V.T.I.C. Article 1.11, provides that the commissioner may modify the form of annual statements "from time to time." The revised law omits the quoted language as unnecessary because, in this context, the power to take an action includes the power to act "from time to time."

Revised Law

Sec. 802.002. ACTUARIAL OPINION REQUIRED. (a) In this section, "qualified actuary" means:

(1) a member in good standing of the American Academy of Actuaries; or

(2) a person who has otherwise demonstrated actuarial competence to the satisfaction of the commissioner or an insurance regulatory official of another state in which the insurance company is domiciled.

(b) An insurance company's annual statement must include a statement of a qualified actuary entitled "Statement of Actuarial Opinion" that:

(1) is located on or is attached to the first page of the annual statement; and

(2) provides the opinion of the actuary relating to policy reserves and other actuarial items for life insurance, accident and health insurance, and annuities, or loss and loss adjustment expense reserves for property and casualty risks, as described in the annual statement instructions of the National Association of Insurance Commissioners as appropriate for the type of risks insured. (V.T.I.C. Art. 1.11, Subsecs. (c), (d).)

Source Law

(c) Included on or attached to page 1 of the annual statement shall be the statement of a qualified actuary, entitled "Statement of Actuarial Opinion," setting forth his or her opinion relating to policy reserves and other actuarial items for life, accident and health, and annuities, or loss and loss adjustment expense reserves for property and casualty risks, as described in the NAIC annual statement instructions as appropriate for the type of risks insured.

(d) In this article, "qualified actuary" means a member in good standing of the American Academy of Actuaries or a person who has otherwise demonstrated actuarial competence to the satisfaction of the commissioner of insurance or other insurance regulatory official of the insurer's domiciliary state.

Revised Law

Sec. 802.003. FILING DATE OF ANNUAL STATEMENT DELIVERED BY POSTAL SERVICE. Except as otherwise specifically provided, for an annual statement that is required to be filed in the offices of the commissioner and that is delivered by the United States Postal Service to the offices of the commissioner after the date on which the annual statement is required to be filed, the date of filing is:

(1) the date of the postal service postmark stamped on the cover in which the document is mailed; or

(2) any other evidence of mailing authorized by the postal service reflected on the cover in which the document is mailed. (V.T.I.C. Art. 1.11(a) (part).)

Source Law

(a) . . . If any annual statement, . . . required to be filed or deposited in the offices of the commissioner, . . . is delivered by the United States Postal Service to the offices of the commissioner . . ., as required, after the prescribed date on which the annual statement, . . . is to be filed, the date of the United States Postal Service postmark stamped on the cover in which the document is mailed, or any other evidence of mailing authorized by the United States Postal Service reflected on the cover in which the document is mailed, shall be deemed to be the date of filing, unless otherwise specifically made an exception to this general statute.

[Sections 802.004-802.050 reserved for expansion]

SUBCHAPTER B. FILING WITH NATIONAL ASSOCIATION OF
INSURANCE COMMISSIONERS

Revised Law

Sec. 802.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies to each company regulated by the commissioner, including:

- (1) a stock life, health, or accident insurance company;
- (2) a mutual life, health, or accident insurance company;
- (3) a stock fire or casualty insurance company;
- (4) a mutual fire or casualty insurance company;
- (5) a Mexican casualty company;
- (6) a Lloyd's plan;
- (7) a reciprocal or interinsurance exchange;
- (8) a fraternal benefit society;

(9) a title insurance company;
(10) an attorney's title insurance company;
(11) a stipulated premium insurance company;
(12) a nonprofit legal service corporation;
(13) a health maintenance organization;
(14) a statewide mutual assessment company;
(15) a local mutual aid association;
(16) a local mutual burial association;
(17) an association exempt under Section 887.102;
(18) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter 842;
(19) a county mutual insurance company; and
(20) a farm mutual insurance company. (V.T.I.C. Art. 1.11, Subsec. (b) (part).)

Source Law

(b) . . . This section is applicable to all companies regulated by the State Board of Insurance including domestic and foreign, stock and mutual life, health, and accident insurance companies; domestic and foreign, stock and mutual, fire and casualty insurance companies; Mexican casualty companies; domestic and foreign Lloyd's plan insurers; domestic and foreign reciprocal or interinsurance exchanges; domestic and foreign fraternal benefit societies; domestic and foreign title insurance companies; attorney's title insurance companies; stipulated premium insurance companies; nonprofit legal service corporations; health maintenance organizations; statewide mutual assessment companies; local mutual aid associations; local mutual burial associations; exempt associations under Article 14.17 of this code; nonprofit hospital, medical, or dental service corporations including companies subject to Chapter 20 of this code; county mutual insurance companies; and farm mutual insurance companies. . . .

Revisor's Note

V.T.I.C. Article 1.11(b) provides that the article is applicable to all companies regulated by the the State Board of Insurance (meaning the Texas Department of Insurance), including certain "domestic or foreign" insurers. The revised law omits the reference to "domestic or foreign" as unnecessary. The authority of the department to regulate domestic and foreign insurance companies is specified in other provisions of the code and, because the revised law applies to all companies regulated by the department, it is not necessary to distinguish domestic and foreign companies in this section.

Revised Law

Sec. 802.052. CONCURRENT FILING WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. (a) Each domestic, foreign, or alien insurance company authorized to engage in the business of insurance in this state shall file a copy of the company's annual statement with the National Association of Insurance Commissioners at the time the company files the statement with the commissioner.

(b) The statement required by Subsection (a) must:

(1) meet requirements adopted by the commissioner, including:

(A) a change in substance or form;
(B) an additional filing; and
(C) any requirement that the statement be in a computer compatible format; and

(2) include the signed jurat page and the actuarial opinion, as required by the jurisdiction in which the insurance company is domiciled.

(c) The insurance company shall also file with the National Association of Insurance Commissioners a copy of any amendment or addition to the annual statement that is subsequently filed with the commissioner. (V.T.I.C. Art. 1.11, Subsec. (b) (part).)

Source Law

(b) Each domestic, foreign, and alien insurer authorized to transact insurance in this state, at the time it files its annual statement with the State Board of Insurance, shall file with the National Association of Insurance Commissioners a copy of its annual statement, along with any changes in substance and form, including a requirement that the submission be in computer compatible format, or additional filings, if any, as may be prescribed by the State Board of Insurance. The information filed shall include the signed jurat page and the actuarial certification, as required by the state of domicile. Any amendments and additions to the annual statement subsequently filed with the State Board of Insurance also shall be filed with the National Association of Insurance Commissioners. . . .

Revisor's Note

Subsection (b), V.T.I.C. Article 1.11, refers to an "actuarial certification, as required by the state of domicile." The revised law substitutes "opinion" for "certification" for consistency with the terminology used in Subsection (c), V.T.I.C. Article 1.11, revised in this code as Section 802.002. The revised law substitutes "jurisdiction" for "state" because Subsection (b), V.T.I.C. Article 1.11, applies to alien insurance companies. An alien insurance company is a company domiciled in a foreign country, and "jurisdiction" is a more appropriate term in that context.

Revised Law

Sec. 802.053. EXEMPTION AUTHORITY. The commissioner may exempt any class of insurance companies from the requirements of this subchapter if the commissioner believes the information required under this subchapter will not be useful for regulatory purposes. (V.T.I.C. Art. 1.11, Subsec. (b) (part).)

Source Law

(b) . . . The Board may exempt any class of insurers from the requirements of this section if the Board believes the information required by this section will not be useful for regulatory purposes. . . .

Revised Law

Sec. 802.054. COMPLIANCE. The commissioner may consider a foreign insurance company to be in compliance with the requirements of Section 802.052 if the company is domiciled in a state with a law substantially similar to that section. (V.T.I.C. Art. 1.11, Subsec. (b) (part).)

Source Law

(b) . . . The Board may deem foreign insurers that are domiciled in a state that has a law substantially similar to this section to be in compliance with this section. . . .

Revised Law

Sec. 802.055. COSTS. (a) An insurance company shall pay the costs of preparing and furnishing to the National Association of Insurance Commissioners the information required under Section 802.052.

(b) Except as provided by Subsection (a), costs relating to providing the information required under Section 802.052 may not be assessed against an insurance company. (V.T.I.C. Art. 1.11, Subsec. (b) (part).)

Source Law

(b) . . . The expense for preparing and furnishing such annual statement and other filings to the National Association of Insurance Commissioners shall be that of the insurer. There shall be no other costs or expenses of any kind levied, charged, or assessed against the insurer relating to such filings. . . .

Revisor's Note

(1) Subsection (b), V.T.I.C. Article 1.11, prohibits certain "costs or expenses" from being "levied, charged, or assessed" against an insurance company. The revised law omits the reference to "expenses" because that term is included in the meaning of "costs." The revised law also omits the references to "levied" and "charged" because those terms are included in the meaning of "assessed."

(2) Subsection (b), V.T.I.C. Article 1.11, refers to costs or expenses "of any kind." The revised law omits the quoted language because it is unnecessary and does not add to the clear meaning of the law.

Revised Law

Sec. 802.056. STATUS OF REPORTS AND OTHER INFORMATION. A report or any other information resulting from the collection, review, analysis, and distribution of information developed from the filing of annual statement convention blanks and provided to the department by the National Association of Insurance Commissioners is considered part of the process of examination of insurance companies under this code, including Articles 1.15-1.19. (V.T.I.C. Art. 1.11, Subsec. (b) (part).)

Source Law

(b) . . . Reports or other information communicated to the State Board of Insurance by the National Association of Insurance Commissioners from the collection, review, analysis, and dissemination of information developed from the filing of annual statement convention blanks is considered part of the process of examination of insurance companies under Articles 1.15-1.19 of this code and other provisions of this code, and this information is an integral part of those examinations.

Revisor's Note

Subsection (b), V.T.I.C. Article 1.11, states that certain reports and information are considered a part of the process of examination of insurance companies, and that "this information is

an integral part of those examinations." The revised law omits the quoted language because it does not add to the clear meaning of the law. A statement that the information is considered part of the examination process is sufficient. An additional statement that the information is "an integral part" of that process is unnecessary.

CHAPTER 803. LOCATION OF BOOKS, RECORDS, ACCOUNTS, AND
OFFICES OUTSIDE OF THIS STATE

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CHAPTER 803. LOCATION OF BOOKS, RECORDS, ACCOUNTS, AND
OFFICES OUTSIDE OF THIS STATE

Revised Law

Sec. 803.001. DEFINITIONS. In this chapter:

(1) "Domestic company" means any entity licensed, chartered, or organized under this code, including:

- (A) a county mutual insurance company;
- (B) a farm mutual insurance company;
- (C) a fire and marine insurance company;
- (D) a fraternal benefit society;
- (E) a general casualty company;
- (F) a group hospital service corporation;
- (G) a health maintenance organization;
- (H) a life, health, and accident insurance company;
- (I) a Lloyd's plan;
- (J) a local mutual aid association;
- (K) a mutual life insurance company;

(L) a mutual insurance company other than a mutual life insurance company;

(M) a nonprofit legal services corporation;

(N) a reciprocal exchange;

(O) a statewide mutual assessment company;

(P) a stipulated premium insurance company;

(Q) a surety and trust company; and

(R) a title insurance company.

(2) "Insurance holding company system" has the meaning described by Section 823.006. (V.T.I.C. Art. 1.28, Sec. 1(a) (part), New.)

Source Law

Art. 1.28

Sec. 1. (a) . . . a domestic insurance company, including a life, health, and accident insurance company, fire and marine insurance company, surety and trust company, general casualty company, title insurance company, fraternal benefit society, mutual life insurance company, local mutual aid association, statewide mutual assessment company, mutual insurance company other than life, farm mutual insurance company, county mutual insurance company, Lloyds plan, reciprocal exchange, group hospital service corporation, health maintenance organization, stipulated premium insurance company, nonprofit legal services corporation, or any other entity licensed under the Insurance Code or chartered or organized under the laws of this state . . . an insurance holding company system, as defined by Article 21.49-1, Insurance Code, as added by Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code),

Revisor's Note

(1) Section 1(a), V.T.I.C. Article 1.28, refers to a "domestic insurance company" or "any other entity licensed under the Insurance Code or chartered or organized under the laws of this state that is an affiliated member of an insurance holding

company system." "Insurance company" is a term used in conjunction with traditional insurance. Included in the source law are entities, such as health maintenance organizations, that are not insurers. Consequently, "domestic company" is a more accurate term than "insurance company." In addition, the revised law adds the definition of "domestic company" for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

(2) Section 1(a), V.T.I.C. Article 1.28, refers to "a domestic insurance company . . . or any other entity licensed under the Insurance Code or chartered or organized under the laws of this state" The revised law substitutes "chartered, or organized under this code" for "chartered or organized under the laws of this state" because all of the laws of this state relating to the chartering or organization of domestic insurance companies or other insurance entities have been codified in this code.

Revised Law

Sec. 803.002. APPLICABILITY OF CHAPTER. This chapter applies only to a domestic company that is:

(1) an affiliate of an insurance holding company system and in compliance with Chapter 823;

(2) a nonprofit legal services corporation the claims and daily affairs of which are handled under contract by a foreign insurer that holds a certificate of authority to engage in a similar business in this state; or

(3) a health maintenance organization that is affiliated with another health maintenance organization or a health care provider. (V.T.I.C. Art. 1.28, Secs. 1(a) (part), (b).)

Source Law

(a) . . . [a domestic insurance company] . . . that is an affiliated member of [an insurance holding company system,]

(b) The domestic insurance company must be:

(1) an affiliate of an insurance holding company system as defined in Article 21.49, Insurance Code, as added by Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that has made the necessary filings as required by that article and that is in compliance with that article;

(2) a nonprofit legal services corporation whose claims and daily affairs are handled under contract by a foreign insurer licensed to do a similar business in this state; or

(3) a health maintenance organization that is affiliated with other health maintenance organizations or health care providers.

Revisor's Note

(1) Section 1(b), V.T.I.C. Article 1.28, refers to an affiliate of an insurance holding company system "that has made the necessary filings as required by that article and that is in compliance with that article." The revised law omits the reference to "necessary filings as required by that article" as unnecessary because an affiliate must have made any "necessary" filings to be "in compliance with that article."

(2) Section 1(b), V.T.I.C. Article 1.28, refers to a foreign insurer "licensed" to engage in business in this state. The revised law substitutes "that holds a certificate of authority" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

Revised Law

Sec. 803.003. AUTHORITY TO LOCATE OUT OF STATE. (a) A domestic company may locate and maintain its principal offices and all or any part of its books, records, and accounts outside this state at any other location in the United States if:

(1) the company has given written notice of this intention to the commissioner, except as provided by Subsection (b);

(2) the commissioner has not disapproved the notice

before the 31st day after the date on which the company gives the notice; and

(3) the company meets the requirements of this chapter.

(b) A separate notice under this section is not required if:

(1) the domestic company has an agreement to maintain its books and records outside of the state with an affiliate; and

(2) the agreement:

(A) has been approved under Chapter 823; and

(B) contains substantially all the information required for notice under this section. (V.T.I.C. Art. 1.28, Secs. 1(a) (part), (f).)

Source Law

Sec. 1. (a) On giving written notice of intent to the commissioner of insurance, and if the commissioner of insurance does not disapprove within 30 days after that notice is given, [a domestic insurance company, including a life, health, and accident insurance company, fire and marine insurance company, surety and trust company, general casualty company, title insurance company, fraternal benefit society, mutual life insurance company, local mutual aid association, statewide mutual assessment company, mutual insurance company other than life, farm mutual insurance company, county mutual insurance company, Lloyds plan, reciprocal exchange, group hospital service corporation, health maintenance organization, stipulated premium insurance company, nonprofit legal services corporation, or any other entity licensed under the Insurance Code or chartered or organized under the laws of this state that is an affiliated member of an insurance holding company system, as defined by Article 21.49-1, Insurance Code, as added by Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code),] may locate and maintain all or any portion of its books, records, and accounts and its principal offices outside this state at a location within the United States

if the company meets the requirements of this section. . . .

(f) A separate notice of intent shall not be required if the domestic insurer has an agreement to maintain its books and records outside of the state with an affiliate and such agreement has been approved or deemed approved as required by Article 21.49-1, Insurance Code, and such agreement contains substantially all the information required for such notice under this article.

Revised Law

Sec. 803.004. LOCATION AT BRANCH OR AGENCY OFFICE. This chapter does not apply to the location and maintenance of the normal books, records, and accounts of a domestic company, including policyholder and claim files, relating to the business produced by or through an agency of the company at a branch or agency office located in the United States, regardless of whether the agency is an affiliate of the company as provided in Chapter 823. (V.T.I.C. Art. 1.28, Sec. 1(a) (part).)

Source Law

Sec. 1. (a) . . . This article does not apply to or prohibit the location and maintenance of the normal books, records, and accounts including policyholder and claim files of a domestic insurance company, relating to the business produced by or through an agency of the company whether or not such agency is an affiliate under Article 21.49-1, at the branch office or agency office, if that office is located in the United States.

Revisor's Note

Section 1(a), V.T.I.C. Article 1.28, states that the article "does not apply to or prohibit the location and maintenance" of certain items. The revised law omits "or prohibit" as unnecessary because its meaning is included in the meaning of "does not apply to."

Revised Law

Sec. 803.005. CONTROL OF BOOKS, RECORDS, ACCOUNTS, AND OFFICES. (a) The books, records, accounts, or offices of a domestic company must be under the company's direct supervision, management, and control.

(b) The ultimate controlling person of an insurance holding company system affiliated with a domestic company, or the immediate or intermediate controlling person of the domestic company, must be domiciled, licensed, or admitted to transact business in a jurisdiction in the United States. (V.T.I.C. Art. 1.28, Secs. 1(c), (d).)

Source Law

(c) The ultimate controlling person of the insurance holding company system, the immediate controlling person of the domestic insurance company, or an intermediate controlling person of the domestic insurance company must be legally domiciled, licensed, or admitted to transact business in a jurisdiction within the United States.

(d) The books, records, accounts, or offices of the domestic insurance company are under the company's direct supervision, management, and control.

Revisor's Note

Section 1(c), V.T.I.C. Article 1.28, states that a company must be legally domiciled, licensed, or admitted to transact business in a jurisdiction within the United States. The revised law omits the word "legally" as unnecessary because it does not add to the clear meaning of the law. The absence of the word "legally" does not imply that it is legal for a company to be illegally domiciled, licensed, or admitted to transact business in the United States.

Revised Law

Sec. 803.006. AGENT FOR SERVICE OF PROCESS. A domestic company that under this chapter has moved its principal offices and any part of its books, records, and accounts outside this

state and the controlling person of an affiliated insurance holding company system must comply with Section 804.102. (V.T.I.C. Art. 1.28, Sec. 1(e).)

Source Law

(e) Both the domestic insurance company and the controlling person of the affiliated insurance holding company system must appoint and maintain a person in this state as attorney for service of process in the manner provided by Section 2(b), Article 1.36, of this code. The commissioner is authorized to accept service and notify the insurance company, in the manner provided by Section 3, Article 1.36, of this code, if the insurance company does not appoint or maintain an attorney for acceptance of process.

Revisor's Note

Section 1(e), V.T.I.C. Article 1.28, refers to the appointment of a person as agent for service of process, and states that the commissioner is authorized to accept service if the company does not appoint or maintain the agent. In addition, Section 1(e) refers to Section 2(b), V.T.I.C. Article 1.36, revised in this code as Section 804.102, as providing the manner for implementing this law. The revised law substitutes a reference to Section 804.102, which duplicates the requirements of Section 1(e).

Revised Law

Sec. 803.007. EXAMINATION EXPENSES. A credit on or an offset against the amount of premium taxes to be paid by a domestic company to the state in a taxable year may not be allowed on:

- (1) a fee or examination expense paid to another state; or
- (2) an examination expense:
 - (A) incurred by a representative of the department that is directly attributable to an examination of the books, records, accounts, or principal offices of a domestic

company located outside this state; or

(B) paid in a different taxable year. (V.T.I.C. Art. 1.28, Sec. 2(a).)

Source Law

Sec. 2. (a) A credit on or offset to the amount of premium taxes to be paid by the domestic insurance company to the state in a taxable year may not be allowed on:

(1) examination expenses incurred by representatives of the department that are directly attributable to an examination of the books, records, accounts, or principal offices of a domestic insurance company located outside this state;

(2) examination expenses or fees paid to a state other than this state; or

(3) examination expenses paid in a different taxable year.

Revised Law

Sec. 803.008. RULES. The commissioner shall adopt rules to authorize a domestic company to maintain its books and records with a nonaffiliated entity other than an agency. (V.T.I.C. Art. 1.28, Sec. 1(g).)

Source Law

(g) The commissioner shall adopt rules allowing the maintenance of the books and records of a domestic insurer subject to this article with a nonaffiliated entity other than an agency and to allow a domestic health maintenance organization to comply with this article.

Revisor's Note

Section 1(g), V.T.I.C. Article 1.28, refers to "a domestic insurer" and a "domestic health maintenance organization." The revised law substitutes the term "domestic company" for the reason stated in Revisor's Note (1) to Section 803.001. A domestic company, as defined by Section 803.001, includes a

domestic health maintenance organization.

Revised Law

Sec. 803.009. CONFLICTING PROVISIONS. This chapter prevails over a conflicting provision of any other law of this state, including Articles 1.16, 4.10, 4.11, and 9.59. (V.T.I.C. Art. 1.28, Sec. 2(b).)

Source Law

(b) This article prevails over any conflicting provisions in Articles 1.16, 4.10, 9.59, and 4.11 of this code or any other law of this state.

CHAPTER 804. SERVICE OF PROCESS

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CHAPTER 804. SERVICE OF PROCESS
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 804.001. DEFINITION. In this chapter, "process" means legal process, including a demand or notice required or permitted by law. (New.)

Revisor's Note

(1) The definition of "commissioner" is omitted from the revised law as unnecessary because Section 31.001, Insurance Code, defines "commissioner" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance. The omitted law reads:

Art. 1.36

Sec. 1. In this article, "commissioner" means the Commissioner of Insurance.

(2) The definition of "process" is derived from Sections 2, 3, 4, 7, 8, 10, and 12, V.T.I.C. Article 1.36. The definition is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 804.002. RULES. The commissioner may adopt rules essential for the effective implementation of this chapter.

(V.T.I.C. Art. 1.36, Sec. 13.)

Source Law

Sec. 13. The State Board of Insurance may promulgate rules as may be determined by it to be essential for the effective implementation of this article.

Revisor's Note

Section 13, V.T.I.C. Article 1.36, refers to the "State Board of Insurance." Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the board have been changed appropriately.

Revised Law

Sec. 804.003. FEES. A fee collected under this chapter shall be deposited to the credit of the Texas Department of Insurance operating account for use by the department. The department shall use the money for payment of salaries and other expenses arising from the:

- (1) examination of insurance companies;
- (2) licensure of insurance companies; and
- (3) investigation of violations of the insurance laws of this state. (V.T.I.C. Art. 1.36, Sec. 3(h).)

Source Law

(h) Fees collected under this article must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund for the use and benefit of the State Board of Insurance as provided by legislative appropriation. The money deposited shall be used for the payment of salaries and other expenses arising out of and in connection with the examination of

insurance companies, the licensing of insurance companies, and investigations of violations of the insurance laws of this state.

Revisor's Note

(1) Section 3(h), V.T.I.C. Article 1.36, requires fees to be deposited in the state treasury to the credit of the State Board of Insurance operating fund. Under the authority of Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.

(2) Section 3(h), V.T.I.C. Article 1.36, states that fees collected shall be for the use and benefit of the department "as provided by legislative appropriation." The revised law omits the quoted language as unnecessary because under Section 6, Article VIII, Texas Constitution, money may not be drawn from the treasury unless a specific appropriation is made.

(3) Section 3(h), V.T.I.C. Article 1.36, refers to expenses arising out of "and in connection with" certain activities. The revised law omits the quoted language because its meaning is included within the meaning of "arising out of."

[Sections 804.004-804.100 reserved for expansion]

SUBCHAPTER B. PERSONS AUTHORIZED TO RECEIVE SERVICE OF PROCESS

Revised Law

Sec. 804.101. DOMESTIC COMPANY. (a) In this section:

(1) "Domestic company" means a company that is domiciled in and authorized to engage in the business of insurance in this state.

(2) "Company" means:

(A) an insurance company, including:

(i) a casualty insurance company;

(ii) a county mutual insurance company;

(iii) an exempt association under Section

887.102;

(iv) a farm mutual insurance company;

(v) a fire insurance company;
 (vi) a fraternal benefit society;
 (vii) a life insurance company;
 (viii) a Lloyd's plan;
 (ix) a mutual assessment company;
 (x) a mutual insurance company other than a mutual life insurance company;
 (xi) a reciprocal exchange;
 (xii) a risk retention group;
 (xiii) a stipulated premium insurance company;
 (xiv) a title insurance company; and
 (xv) a carrier providing job protection insurance;
 (B) a group hospital service corporation;
 (C) a health maintenance organization;
 (D) a prepaid legal services corporation; or
 (E) any other company engaged in the business of insurance as a principal.

(b) A domestic company may be served with process by:

- (1) serving the president, an active vice president, secretary, or attorney in fact at the home office or principal place of business of the company; or
- (2) leaving a copy of the process at the home office or principal business office of the company during regular business hours. (V.T.I.C. Art. 1.36, Sec. 2(a); New.)

Source Law

Sec. 2. (a) Except as provided by Subsection (b) of this section, a domestic insurance carrier, including a casualty, county mutual, farm mutual, fire, fraternal, life, Lloyd's, mutual other than life, reciprocal, stipulated premium, or title insurance company, and any mutual assessment company, carrier providing job protection insurance, risk retention group, group hospital service corporation, health maintenance organization, prepaid legal services corporation, and exempt association under

Article 14.17 of this code authorized to conduct the business of insurance in this state, and any other company domiciled in Texas and engaged in the business of insurance as a principal, may be served with legal process, notice, or demand required or permitted by law by serving the president, any active vice-president, secretary, or attorney in fact at the home office or principal place of business of that carrier or by leaving a copy of the process, notice, or demand at the home office or principal business office of the carrier during regular business hours.

Revisor's Note

Section 2(a), V.T.I.C. Article 1.36, refers to a "domestic insurance carrier" and various other entities "authorized to conduct the business of insurance in this state." "Carrier" is a term used in conjunction with traditional insurance. Included in the source law are entities, such as health maintenance organizations, that are not insurers. Consequently, the revised law uses "domestic company" to refer to certain entities instead of the less accurate term "insurance carrier." In addition, the revised law adds the definitions of "company" and "domestic company" for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definitions.

Revised Law

Sec. 804.102. DOMESTIC COMPANY THAT MAINTAINS PRINCIPAL OFFICES OR BOOKS, RECORDS, AND ACCOUNTS OUT OF STATE. (a) In this section, "domestic company" has the meaning assigned by Section 803.001.

(b) As a condition of being authorized to engage in the business of insurance in this state, a domestic company that under Chapter 803 has moved its principal offices and any part of its books, records, and accounts outside this state and the controlling person of an affiliated insurance holding company system must appoint and maintain as agent for service of process a person in this state on whom a judicial or administrative process may be served.

(c) If a domestic company does not appoint or maintain a person in this state as agent for service of process or the agent cannot with reasonable diligence be found, the commissioner may accept service of process and notify the company in the manner provided by Subchapter C. (V.T.I.C. Art. 1.36, Sec. 2(b).)

Source Law

(b) As a condition of being authorized to conduct the business of insurance in this state, a domestic carrier and the controlling person of the affiliated insurance holding company system that has moved its principal offices and any portion of its books, records, and accounts outside this state under Article 1.28 of this code must appoint and maintain a person in this state as attorney for service of process on whom all judicial and administrative processes, notices, or demands may be served. The commissioner is authorized to accept service and notify the carrier, in the manner provided by Section 3 of this article, if the carrier does not appoint or maintain an attorney for acceptance of service who cannot with reasonable diligence be found.

Revisor's Note

(1) Section 2(b), V.T.I.C. Article 1.36, refers to a domestic "carrier" that takes certain actions under V.T.I.C. Article 1.28. The revised law refers to a "domestic company" because that is the phrase used in Chapter 803, which revises Article 1.28. A reference to the definition of "domestic company" in Section 803.001 is added for clarification.

(2) Section 2(b), V.T.I.C. Article 1.36, refers to the appointment and maintenance of a person as "attorney" to receive service of process. It is clear from the context that the person does not need to be an attorney at law to receive service of process. The revised law substitutes "agent" for "attorney" throughout this chapter for consistency and because the word "agent" is more commonly used to describe the person designated to receive service of process in the context of Section 2(b).

Revised Law

Sec. 804.103. AUTHORIZED ALIEN OR FOREIGN COMPANY. (a) In this section, "company" means:

- (1) an insurance company, including a:
 - (A) fire, casualty, or fire and casualty insurance company;
 - (B) fraternal benefit society;
 - (C) life insurance company, including a mutual or nonprofit life insurance company;
 - (D) Lloyd's plan;
 - (E) Mexican casualty insurance company;
 - (F) mutual fire, mutual casualty, or mutual fire and casualty insurance company;
 - (G) reciprocal exchange;
 - (H) risk retention group; and
 - (I) title insurance company;
- (2) a health maintenance organization; and
- (3) any other insurance company, regardless of its type or category, authorized to engage in the business of insurance in this state.

(b) As a condition to being issued a certificate of authority to engage in the business of insurance in this state, an alien or foreign company must appoint a person in this state as agent for service of process on whom any process to be served on the company may be served.

(c) The commissioner is an alien or foreign company's agent on whom process may be served as provided by Subchapter C if the:

- (1) company fails to appoint or maintain an agent under Subsection (b);
- (2) agent appointed under Subsection (b) cannot with reasonable diligence be found; or
- (3) company's certificate of authority is revoked.

(V.T.I.C. Art. 1.36, Sec. 4.)

Source Law

Sec. 4. (a) As a condition of being issued a certificate of authority to conduct the business of insurance in this state, foreign or alien insurance carriers, including a life, mutual life, nonprofit life, fire, mutual fire and/or casualty, fire and casualty, casualty, Mexican casualty, Lloyd's, reciprocal, fraternal, and title insurance company, and a health maintenance organization, risk retention group, and any other foreign or alien insurance company regardless of its type or category authorized to conduct the business of insurance in this state, shall appoint a person in this state as attorney for service of process on whom any process, notice, or demand required or permitted by law to be served on the insurance company may be served.

(b) If a foreign or alien insurance company authorized to transact business in this state fails to appoint or maintain an attorney for service in this state, or if an attorney for service cannot with reasonable diligence be found, or if the certificate of authority of a foreign insurance company is revoked, the commissioner shall be the attorney for service of the company on whom process, notice, or demand may be served as provided by Section 3 of this article.

Revisor's Note

Section 4(a), V.T.I.C. Article 1.36, refers to "insurance carriers" and various other entities "authorized to conduct the business of insurance in this state." Instead of the quoted language, the revised law refers to "company" for the reasons stated in the revisor's note to Section 804.101.

Revised Law

Sec. 804.104. RISK RETENTION GROUP NOT CHARTERED IN THIS STATE. A risk retention group that is not chartered but that is registered in this state under Section 4(b)(3), Article 21.54, must designate the commissioner as its agent for service of process and receipt of legal documents. (V.T.I.C. Art. 1.36, Sec.

5(a).)

Source Law

Sec. 5. (a) A risk retention group registered in this state under Article 21.54 of this code must designate the commissioner as its agent for service of process and receipt of legal documents.

Revisor's Note

(1) Section 5(a), V.T.I.C. Article 1.36, refers to a risk retention group registered under V.T.I.C. Article 21.54. Only one section in Article 21.54 refers to registration of a risk retention group. For the reader's convenience, the revised law cites the section which deals with a registered risk retention group. In addition, the revised law clarifies that this section deals only with a risk retention group not chartered in this state. See Section 4(a), Article 21.54.

(2) Section 5, V.T.I.C. Article 21.54, refers to the section providing the procedures and fees for service under this section. The revised law omits the cross-reference as unnecessary because Sections 804.201, 804.202, and 804.203 are sufficient to state what law applies when the commissioner is designated or appointed as agent to receive service of process on a person's behalf. The omitted law reads:

(b) Procedures and fees for service of process on a risk retention group are governed by Section 3 of this article.

Revised Law

Sec. 804.105. PERSON IN RECEIVERSHIP. (a) Service of process with respect to an individual, insurer, or other entity for which a court has appointed the liquidator as receiver must be made only on the receiver.

(b) If Subsection (a) applies, service on the commissioner or the secretary of state has no effect. (V.T.I.C. Art. 1.36, Sec. 6.)

Source Law

Sec. 6. If a court of competent jurisdiction has appointed the liquidator as receiver for any person, insurer, or other entity, service of process with respect to that person, insurer, or other entity must be made on the person designated liquidator as receiver. This service of process has no effect if it is made on the commissioner or the secretary of state.

Revisor's Note

Section 6, V.T.I.C. Article 1.36, refers to a court "of competent jurisdiction." The revised law omits the quoted language as unnecessary because the general laws of civil jurisdiction determine which courts have jurisdiction over a matter. For example, see Sections 24.007 through 24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 804.106. ELIGIBLE SURPLUS LINES INSURER; POLICY REQUIREMENT FOR INSURER AND AGENT. (a) Each surplus lines insurer that assumes a surplus lines risk under Chapter 981 is subject to this section.

(b) Any act of engaging in the business of insurance by an eligible surplus lines insurer:

(1) constitutes the irrevocable appointment of the secretary of state by that insurer as agent for service of process arising from the insurer's engaging in the business of insurance in this state, other than service of process for an action or proceeding by the department or state; and

(2) signifies the insurer's agreement that service under this subsection has the same effect as personal service on the insurer or the insurer's successor in interest.

(c) An appointment under Subsection (b)(1) is binding on the eligible surplus lines insurer and the insurer's successor in interest.

(d) A policy issued by an eligible surplus lines insurer or a certificate of insurance issued by the surplus lines agent must

contain a provision stating the substance of this section and designating the person to whom the commissioner is to mail process. The plaintiff shall supply this address in any citation served under this section.

(e) This section is in addition to any other method provided by law for service of process on a surplus lines insurer, including the method provided by Subchapter C. (V.T.I.C. Art. 1.36, Sec. 12.)

Source Law

Sec. 12. (a) Any act of doing an insurance business by an eligible surplus lines insurance company constitutes an irrevocable appointment of the Secretary of State by that insurer binding on it and its successors in interest to be the lawful attorney for service of that insurer. The Secretary of State may be served with any process, notice, or demand arising out of doing an insurance business in this state by that insurer, except in an action, suit, or proceeding by the State Board of Insurance or by the state.

(b) Any act of doing an insurance business by an eligible surplus lines insurance company signifies the insurer's agreement that legal process served under this section has the same legal force and validity as personal service of process in this state on that insurer or its successor in interest.

(c) Any policy issued by the surplus lines insurer or any certificate of insurance issued by the surplus lines agent must contain a provision stating the substance of this section and designating the Person to whom the commissioner is to mail process. This address must be supplied by the plaintiff in the citation that is served.

(d) Each surplus lines insurer assuming a surplus lines risk under this article is considered to have made itself subject to the terms of this section.

(e) This section is cumulative of any other methods that may be provided by law for service of process on a surplus lines insurer, including Section 3 of this article.

Revisor's Note

(1) Section 12(a), V.T.I.C. Article 1.36, refers to "an action, suit, or proceeding." The revised law omits "suit" because its meaning is included within the meaning of "action."

(2) Section 12(d), V.T.I.C. Article 1.36, refers to "[e]ach surplus lines insurer assuming a surplus lines risk under this article." A surplus lines insurer does not assume a surplus lines risk under this article, which governs service of process. Instead, V.T.I.C. Article 1.14-2, revised as Chapter 981, governs the assumption of surplus lines risk in Texas. The revised law is drafted accordingly.

Revised Law

Sec. 804.107. UNAUTHORIZED PERSON OR INSURER. (a) In this section, "personal representative" includes an executor or administrator.

(b) Any act of engaging in the business of insurance as provided by Subchapter B, Chapter 101, by an unauthorized person or insurer:

(1) constitutes the irrevocable appointment of the commissioner by that person or insurer as agent for service of process arising from the person's or insurer's engaging in the business of insurance in this state, other than service of process for an action or proceeding by the department or state;

(2) constitutes the irrevocable appointment of the secretary of state by that person or insurer as agent for service of process for an action or proceeding described by Subsection (c) and arising from the person's or insurer's engaging in the business of insurance in this state; and

(3) signifies the agreement of the person or insurer that process served under this subsection and Subsection (d) has the same effect as personal service in this state on that person or insurer or the personal representative of that person or insurer or if a corporation, the corporation's successor in interest.

(c) The process may be served on the secretary of state only in an action or proceeding brought:

(1) in court by the department or the state against an unauthorized person or insurer; or

(2) before the department by a process against the unauthorized person or insurer.

(d) Service of process on an unauthorized person or insurer may be served on a person in this state that engages, on the behalf of the unauthorized person or insurer, in an act of engaging in the business of insurance in this state as provided by Subchapter B, Chapter 101.

(e) In an action or proceeding in which process is served under Subsection (b) or (d), a plaintiff or complainant is not entitled to a default judgment or determination before the 30th day after the date on which the copy of the process is mailed to the defendant.

(f) This section does not apply to an entity that was an eligible surplus lines insurer under Chapter 981 on the date on which the applicable coverage was issued.

(g) This section does not limit or diminish the right to serve process on a person or insurer in any other manner provided by law. (V.T.I.C. Art. 1.36, Secs. 7(a), (b), (c), (d), 8(a), (b), (c), (f), 10.)

Source Law

Sec. 7. (a) Any act of doing an insurance business as provided by Section 2 of Article 1.14-1 of this code by an unauthorized person or insurer is equivalent to and constitutes an irrevocable appointment of the commissioner by that person or insurer, binding on him, his executor, administrator, or personal representative or, if a corporation, successor in interest to be the lawful attorney for service of that person or insurer. The commissioner may be served any process, notice, or demand arising out of doing an insurance business in this state by that person or insurer, except in an action, suit, or proceeding by the State Board of Insurance or by the state.

(b) Any act of doing an insurance business as provided by Section 2 of Article 1.14-1 of this code by any unauthorized

person or insurer signifies the person's or insurer's agreement that legal process served under this section has the same legal force and validity as personal service of process in this state on that person or insurer or his executor, administrator, or personal representative or, if a corporation, its successor in interest.

(c) In addition to service under Section 3 of this article and Subsection (a) of this section, service of process, notice, or demand on an unauthorized person or insurer is valid if served on any person in this state who on behalf of that unauthorized person or insurer is doing any act of an insurance business as provided by Section 2 of Article 1.14-1 of this code. This section does not apply to surplus lines insurers which were deemed eligible surplus lines insurers pursuant to Article 1.14-2 of this code at the date the applicable coverage was issued.

(d) A plaintiff or complainant is not entitled to a judgment by default in any action, suit, or proceeding in which process, notice, or demand is served under this section earlier than the 30th day after the date on which the copy of the process, notice, or demand served is mailed to the defendant.

Sec. 8. (a) Service of process may be effected on the secretary of state only in those actions, suits, or other proceedings brought:

(1) in court by the State Board of Insurance or by the state against unauthorized persons or insurers; or

(2) before the State Board of Insurance by notice, order, pleading, or process against unauthorized persons or insurers.

(b) Any act of doing an insurance business as provided by Section 2 of Article 1.14-1 of this code by any unauthorized person or insurer is equivalent to and constitutes an irrevocable appointment of the secretary of state by that person or insurer, binding on him, his executor, administrator, or personal representative or, if a corporation, successor in interest to be the lawful attorney for service of that person or insurer. The

secretary of state may be served legal notice, order, pleading, or other process in any proceeding described by Subsection (a) of this section that arises out of doing an insurance business in this state by that person or insurer. This section does not apply to surplus lines insurers which were deemed eligible surplus lines insurers pursuant to Article 1.14-2 of this code at the date applicable coverage was issued.

(c) Any act of doing an insurance business as provided by Section 2 of Article 1.14-1 of this code by any unauthorized person or insurer signifies that such person or insurer agrees that a notice, order, pleading, or other legal process in the proceeding described by Subsection (a) of this section has the same legal force and validity as personal service of process in this state on that person or insurer or his executor, administrator, or personal representative or, if a corporation, its successor in interest.

(f) A plaintiff or complainant is not entitled to a judgment or determination by default in any court or administrative proceeding in which a notice, order, pleading, or other process in proceedings is served under this section earlier than the 30th day after the date the copy of the service is mailed to the defendant.

Sec. 10. Sections 7 and 8 of this article do not limit or abridge the right to serve process, notice, other pleading, or demand on any person or insurer in any other manner provided by law.

Revisor's Note

(1) Section 7(a), V.T.I.C. Article 1.36, refers to "an action, suit, or proceeding." The revised law omits "suit" for the reason stated in Revisor's Note (1) to Section 804.106.

(2) Section 8, V.T.I.C. Article 1.36, refers to a "notice, order, pleading, or other legal process," and Section 10, V.T.I.C. Article 1.36, refers to "process, notice, other

pleading, or demand." Section 804.001 defines "process" to mean legal process, including a notice or demand. The context of this section and the entire article shows that the term "process" includes not only "notice," but also "order" and "pleading." Throughout this chapter, the revised law substitutes "process" for "order" and "pleading" because the meaning of those words is included within the meaning of "process."

(3) Section 10, V.T.I.C. Article 1.36, provides that Sections 7 and 8 of that article, revised in this section, do not "limit or abridge" the right to serve process. The revised law substitutes "diminish" for "abridge" because the terms are synonymous and the former is more commonly used.

Revised Law

Sec. 804.108. INSURANCE HOLDING COMPANY SYSTEM LAW. A person, as that term is defined by Section 823.002, that violates Chapter 823 is considered to have appointed the commissioner as agent for service of process on the person for an action or proceeding arising from a violation of that chapter. (V.T.I.C. Art. 1.36, Sec. 7(e) (part).)

Source Law

(e) . . . Any person defined by Subsection (i) of Section 2 of Article 21.49-1 of this code is considered to have performed acts equivalent to and constituting an appointment of the commissioner by that person to be his lawful attorney on whom process in any action, suit, or proceeding arising out of violations of Article 21.49-1 of this code may be served. . . . Procedures and fees for service of process are governed by Section 3 of this article.

Revisor's Note

Section 7(e), V.T.I.C. Article 1.36, states that "[p]rocedures and fees for service of process are governed by Section 3 of this article" (now revised as Subchapter C). The revised law omits the cross-reference as unnecessary because Subchapter C provides sufficient authority as to what law applies

when the commissioner is designated or appointed as agent to receive service of process on a person's behalf.

[Sections 804.109-804.200 reserved for expansion]

SUBCHAPTER C. PROCEDURES RELATING TO SERVICE OF PROCESS ON
COMMISSIONER

Revised Law

Sec. 804.201. PROCEDURE FOR SERVING COMMISSIONER. (a) Process served by serving the commissioner under this chapter must be directed to the defendant and include:

- (1) for an unauthorized person or insurer, the name and address of the person or insurer to be served;
- (2) for a risk retention group, the name and address of the group to be served;
- (3) for a surplus lines insurer, the name and address of the insurer to be served;
- (4) for an unincorporated association, trust, or other organization formed under Article 3.71, the name and address of the association, trust, or organization; or
- (5) for an authorized company, the name and address of the company as it appears in the department records.

(b) Process may be served on the commissioner:

- (1) personally by a disinterested person who is at least 18 years of age leaving two copies of the process at the office of the department during regular business hours with:
 - (A) the commissioner; or
 - (B) an appointee of the commissioner authorized to receive process; or
- (2) by certified or registered mail.

(c) A fee not to exceed \$50, payable by check or money order to the department, must accompany each process served on the commissioner. (V.T.I.C. Art. 1.36, Secs. 3(a), (b), (c).)

Source Law

Sec. 3. (a) If service of legal process, notice, or demand is to be effected on a company or organization by serving the commissioner, the process, notice, or demand may be served

personally by a disinterested person over 18 years of age by leaving at the offices of the State Board of Insurance during regular business hours two copies of the process, notice, or demand with the commissioner or with any appointee of the commissioner authorized to receive process or by certified or registered mail.

(b) A fee of not more than \$50, payable by check or money order to the State Board of Insurance, must be provided for each legal process, notice, or demand served on the commissioner, and the fee must accompany each service of legal process, notice, or demand filed with the commissioner.

(c) The citation must be directed to the defendant insurance company or organization, served through the commissioner, and must include the following:

(1) for a licensed company, the name and address of the company as it appears in the records of the State Board of Insurance;

(2) for an unauthorized person or insurer, the name and address of the person or insurer to be served;

(3) for a surplus lines insurer, the name and address of the company to be served;

(4) for a risk retention group, the name and address of the group to be served; or

(5) for an unincorporated association, trust, or other organization formed under Article 3.71 of this code, the name and address of the association, trust, or organization.

Revisor's Note

Section 3(c)(1), V.T.I.C. Article 1.36, refers to a "licensed" company. The revised law substitutes "authorized" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

Revised Law

Sec. 804.202. EFFECT OF SERVICE ON COMMISSIONER. Service on the commissioner acting as agent for service of process is

service on the principal. (V.T.I.C. Art. 1.36, Sec. 3(g).)

Source Law

(g) Service on the commissioner acting as attorney for service constitutes service on the principal.

Revised Law

Sec. 804.203. MAILING PROCESS; CERTIFICATE. (a) The commissioner shall immediately send by registered or certified mail, return receipt requested, one copy of process served on the commissioner under Section 804.201 to:

- (1) the defendant at the address supplied in the process as provided by Sections 804.201(a)(1) through (4); or
- (2) if Section 804.201(a)(5) applies, the home office or principal business office of the authorized company, as indicated in the department records.

(b) The commissioner shall send by registered or certified mail, return receipt requested, copies of process served under Section 804.108 to the last known address of the person.

(c) On receiving the return receipt for certified or registered mail, the commissioner shall issue a certificate showing the service and proof of delivery by a return receipt to the plaintiff and clerk of the court or agency where the proceeding is pending.

(d) The commissioner shall provide on request the certificate described by Subsection (c). The commissioner may charge a fee not to exceed \$10 for the certificate. (V.T.I.C. Art. 1.36, Secs. 3(d), (f), 7(e) (part).)

Source Law

[Sec. 3]

(d) If the process, notice, or demand is served on the commissioner, he shall immediately have one copy forwarded by certified or registered mail to:

- (1) the home office or principal business office of the company, if licensed, as indicated in the records of the

State Board of Insurance; or

(2) the defendant at the address supplied in the citation as provided by Subdivision (2), (3), (4), or (5) of Subsection (c) of this section.

(f)(1) Upon receiving the return receipt, the commissioner shall issue a certificate showing the service and proof of delivery by a return receipt for certified or registered mail to the plaintiff and clerk of the court or agency where the case is pending.

(2) The commissioner shall provide on request a certificate issued by him showing the service and proof of delivery by a return receipt for certified or registered mail. The commissioner may charge a fee not to exceed \$10 for this certificate.

[Sec. 7]

(e) . . . Copies of process shall be served on the commissioner and transmitted by the commissioner by registered or certified mail to that person at his last known address. . . .

Revisor's Note

(1) Section 3(d)(1), V.T.I.C. Article 1.36, refers to a "licensed" company. The revised law substitutes "authorized" for "licensed" for the reasons stated in the revisor's note to Section 804.201.

(2) Section 7(e), V.T.I.C. Article 1.36, states that "copies of process shall be served on the commissioner." The revised law omits the quoted language as unnecessary because Section 804.108 states that the commissioner is the agent for service of process, and Section 7(e) states that the commissioner shall mail copies of process.

Revised Law

Sec. 804.204. RECORD. The commissioner shall keep a record of:

(1) each process served on the commissioner under this

chapter; and

(2) the action taken by the commissioner regarding the process. (V.T.I.C. Art. 1.36, Sec. 3(e).)

Source Law

(e) The commissioner shall keep a record of any process, notice, or demand served on him under this article and the action taken by him with reference to the process, notice, or demand.

[Sections 804.205-804.300 reserved for expansion]

SUBCHAPTER D. PROCEDURES RELATING TO SERVICE OF PROCESS ON
SECRETARY OF STATE

Revised Law

Sec. 804.301. PROCEDURE FOR SERVING SECRETARY OF STATE.
Process served by serving the secretary of state under Section 804.107 must be served by leaving two copies of the process at the office of the secretary of state during regular business hours with:

- (1) the secretary of state; or
- (2) an appointee of the secretary of state authorized to receive service. (V.T.I.C. Art. 1.36, Sec. 8(d).)

Source Law

(d) Service of a notice, order, pleading, or other process in a proceeding described by Subsection (a) of this section must be made by leaving at the office of the secretary of state during regular business hours two copies of the notice, order, pleading, or other process. The copies may be left with the secretary of state or with any appointee of the secretary of state authorized to receive service.

Revised Law

Sec. 804.302. MAILING PROCESS. The secretary of state shall mail one copy of process in the proceeding served on the secretary of state under Section 804.301 to the defendant in a

court proceeding or to whom the process in an administrative proceeding is addressed or directed, at the person's or entity's last known home office or principal place of business. (V.T.I.C. Art. 1.36, Sec. 8(e) (part).)

Source Law

(e) The secretary of state shall mail one copy of the notice, order, pleading, or other process in the proceeding to the defendant in a court proceeding or to whom the notice, order, pleading, or process in an administrative proceeding is addressed or directed at the person's or entity's last known home office or principal place of business. . . .

Revised Law

Sec. 804.303. RECORD. The secretary of state shall keep a record of each process served on the secretary of state. (V.T.I.C. Art. 1.36, Sec. 8(e) (part).)

Source Law

(e) . . . The secretary of state shall keep a record of the notices, orders, pleadings, and other process served on him.

Revisor's Note

(End of Chapter)

Section 9, V.T.I.C. Article 1.36, states that the attorney general may enforce an order or decision resulting from "a court proceeding or an administrative proceeding before the State Board of Insurance under Sections 7 and 8 of this article." The revised law omits this section as unnecessary for several reasons. First, although Section 9 refers to proceedings "under Sections 7 and 8" of Article 1.36, this statement is inaccurate, as there are no proceedings under those sections. Instead, those sections state conditions under which the commissioner or secretary of state may be served on an unauthorized person's behalf. Second, V.T.I.C. Article 1.09-1 provides that the

department "shall be represented and advised by the Attorney General in all legal matters." Finally, Section 101.105 specifically addresses the attorney general with respect to "unauthorized insurance," which is the subject of Sections 7 and 8, Article 1.36. The omitted law reads:

Sec. 9. The attorney general, on request of the State Board of Insurance, may proceed in the courts of this or any other state or in any federal court or agency to enforce an order or decision resulting from a court proceeding or an administrative proceeding before the State Board of Insurance under Sections 7 and 8 of this article.

CHAPTER 805. DIRECTORS, OFFICERS, AND OTHER INTERESTED
PERSONS

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CHAPTER 805. DIRECTORS, OFFICERS, AND OTHER INTERESTED
PERSONS

SUBCHAPTER A. ACTIVITIES OF DIRECTORS, OFFICERS,
AND SHAREHOLDERS

Revised Law

Sec. 805.001. DEFINITIONS. In this subchapter:

(1) "Major shareholder" means an individual, corporation, partnership, association, joint-stock company, business trust, or unincorporated organization that is directly or indirectly the beneficial owner of more than 10 percent of any class of an equity security of an insurer.

(2) "Subsidiary" means a corporation:

(A) of which at least 50 percent of any class of an equity security is owned by an insurer; or

(B) that is managed, directly or indirectly controlled, or subject to control by an insurer. (V.T.I.C. Art. 1.29, Secs. 1(a) (part), (b) (part).)

Source Law

Art. 1.29

Sec. 1. (a) [No director or officer of any insurance company] transacting business in or organized under the laws of this State, and [no person] who is directly or indirectly the beneficial owner of more than 10% of any class of equity security of any such insurance company,

(b) "Person," as used herein, shall mean an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

"Subsidiary," as used herein shall mean any corporation in which an insurance company owns 50% or more of any class of equity securities of such corporation, or which is managed by or is directly or indirectly controlled by or is subject to control by an insurance company. . . .

Revisor's Note

(1) Section 1(a), V.T.I.C. Article 1.29, refers to a "person who is directly or indirectly the beneficial owner of more than 10% of any class of equity security" of an insurer and subsequently refers to that person as a "shareholder." For drafting convenience and to clarify that each reference to a "shareholder" of an insurer under V.T.I.C. Article 1.29 means a person who is directly or indirectly the beneficial owner of more than 10 percent of any class of equity security of the insurer, the revised law adds the definition of "major shareholder" and throughout the subchapter substitutes that term for the substance of the definition and for each reference to a "shareholder."

(2) Section 1(b), V.T.I.C. Article 1.29, defines "person." The revised law incorporates the substance of that definition

into the added definition of "major shareholder" because the only reference to "person" in the source law is the reference to a "person" who is a shareholder, as described by Revisor's Note (1) to this section.

Revised Law

Sec. 805.002. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to any insurer, including a:

- (1) capital stock company;
- (2) reciprocal or interinsurance exchange;
- (3) Lloyd's plan;
- (4) fraternal benefit society;
- (5) mutual company, including a mutual assessment company;
- (6) local mutual aid association;
- (7) burial association;
- (8) county mutual insurance company;
- (9) farm mutual insurance company;
- (10) fidelity, guaranty, or surety company;
- (11) mutual life insurance company;
- (12) mutual insurance company other than a mutual life insurance company;
- (13) stipulated premium company;
- (14) title insurance company; and
- (15) any other insurance company engaged in the business of insurance in or organized under the laws of this state or otherwise regulated under this code.

(b) A provision of this code limiting regulation under this code does not limit the application of this subchapter.

(c) This subchapter controls if there is ambiguity or a conflict between this subchapter and another provision of this code. (V.T.I.C. Art. 1.29, Secs. 1(b) (part), 2.)

Source Law

[Sec. 1]

(b)

"Insurance company," as used herein, shall include and mean

capital stock companies, reciprocal or inter-insurance exchanges, Lloyd's companies, fraternal benefit societies, mutual and mutual assessment associations, local mutual aids, local mutual burial associations, county and farm mutual associations, fidelity, guaranty and surety companies, [trust companies organized under the provisions of Chapter 7 of this Code,] mutual life insurance companies, mutual insurance companies other than life, stipulated premium companies, title insurance companies, and all other insurers transacting an insurance business in this State.

Sec. 2. The provisions of this Article are applicable to all insurance companies subject to regulation by the Insurance Code and any provision of exemption or any provision of inapplicability or applicability limiting such regulation in any chapter of the Code are not in limitation of the provisions of this Article, and in the event of conflict between this Article and any other article of the Code or in the event of any ambiguity the provisions of this Article shall govern.

Revisor's Note

Section 1(b), V.T.I.C. Article 1.29, defines "insurance company" to include "trust companies organized under the provisions of Chapter 7 of this Code." Those provisions were derived originally from Chapter 10, General Laws, Acts of the 29th Legislature, 1st Called Session, 1905, and were eventually transferred to the Insurance Code on the enactment of that code in 1951. The revised law omits the reference to "trust companies" because Section 1, Chapter 388, Acts of the 55th Legislature, Regular Session, 1957, repealed the provisions of Chapter 7, Insurance Code. The remainder of Chapter 388 enacted new requirements applicable to the creation and organization of trust companies, some of which were added to Vernon's Texas Civil Statutes as Article 1513a. That article was repealed by Chapter 168, Acts of the 70th Legislature, 1987, which added the substance of Article 1513a to the law on the organization of trust companies contained in Chapter XI, The Texas Banking Code (Article 342-1101 et seq., Vernon's Texas Civil Statutes). To

the extent that any trust companies organized under Chapter 7, Insurance Code, still exist and operate as insurers, they are included in the reference under Subsection (a)(15) of the revised law to "any other insurance company engaged in the business of insurance." The omitted law reads:

(b) . . . trust companies organized under the provisions of Chapter 7 of this Code

Revised Law

Sec. 805.003. PROHIBITED ACTIVITIES. (a) A director, officer, or major shareholder of an insurer may not:

(1) except as provided by this subchapter, directly, indirectly, or through a substantial interest in another corporation, firm, or business unit receive money or another thing of value for negotiating, procuring, recommending, or aiding in a purchase, sale, or exchange of property or a loan from the insurer or its subsidiary;

(2) directly, indirectly, or through a substantial interest in another corporation, firm, or business unit have a pecuniary interest in a purchase, sale, exchange, or loan described by Subdivision (1) as a principal, co-principal, agent, or beneficiary; or

(3) directly or indirectly accept a loan or guarantee described by Subsection (b).

(b) An insurer may not directly, indirectly, or through its subsidiary make a loan to or guarantee the financial obligation of a director, officer, or major shareholder of an insurer.

(V.T.I.C. Art. 1.29, Sec. 1(a) (part).)

Source Law

Sec. 1. (a) No director or officer of any insurance company . . . [and] no person [who is directly or indirectly the beneficial owner of more than 10% of any class of equity security of any such insurance company,] shall receive, except as permitted by this Article, any money or valuable thing, either directly or indirectly or through any substantial interest in any

other corporation, firm or business unit for negotiating, procuring, recommending or aiding in any purchase, sale or exchange of property or loan, made by any such company or any subsidiary thereof; nor shall he be pecuniarily interested, either as principal, co-principal, agent or beneficiary, either directly or indirectly, or through any substantial interest in any other corporation, firm or business unit, in any such purchase, sale, exchange or loan; nor shall such company make any loan to or guarantee the financial obligation of any such director, officer or shareholder, either directly or indirectly, or through its subsidiaries, nor shall any such director, officer or shareholder accept any such loan or guarantee either directly or indirectly.

Revised Law

Sec. 805.004. ACTIVITIES NOT PROHIBITED. This subchapter does not prohibit:

- (1) a director, officer, or major shareholder of an insurer from:
 - (A) becoming a policyholder of the insurer and exercising the usual rights of a policyholder;
 - (B) participating as beneficiary in a pension plan, deferred compensation plan, profit-sharing or bonus plan, stock option plan, or similar plan adopted by the insurer and for which the director, officer, or major shareholder may be eligible under the terms of the plan;
 - (C) receiving a salary, bonus, or other remuneration for a service rendered to the insurer as an employee of the insurer and not in violation of another provision of this code; or
 - (D) entering into an arms-length transaction with the insurer if:
 - (i) the transaction is not prohibited by another statute; and
 - (ii) the commissioner approves the transaction before the transaction is made;

- (2) a director of an insurer from:
 - (A) performing professional services not required of a director by law; or
 - (B) receiving director's fees or reimbursement for an expense incurred in the performance of a duty as a director;
- (3) a transaction within an insurance holding company system by an insurer with its holding company, subsidiary, or affiliate that:
 - (A) is not prohibited by law;
 - (B) meets the test of being fair and proper; and
 - (C) is regulated by another statute;
- (4) a transaction or arrangement that:
 - (A) is not prohibited by law; and
 - (B) meets the test of being fair and proper as prescribed by rules adopted by the commissioner; or
- (5) the approval and payment of lawful dividends to policyholders and shareholders. (V.T.I.C. Art. 1.29, Sec. 1(c).)

Source Law

(c) Nothing in this Article shall be construed as prohibiting the following:

(1) Any such director, officer or shareholder from becoming a policyholder of the insurance company and enjoying the usual rights of a policyholder or from participating as beneficiary in any pension plan, deferred compensation plan, profit-sharing or bonus plan, stock option plan, or similar plan adopted by the insurance company and to which he may be eligible under the terms of such plan; or prohibit any such director, officer or shareholder from receiving salaries, bonuses and other remuneration for services rendered to the insurance company as an employee and not in violation of other provisions of the Insurance Code.

(2) Professional services performed by such directors for duties not placed by law upon a director and director's fees and expense reimbursement for the performance of their duties as

directors.

(3) The approval and payment of lawful dividends to policyholders and shareholders.

(4) Any other arms-length transaction not forbidden by other statutes between such directors, officers and shareholders and such insurance company, provided such transactions are approved prior to the making thereof by the Commissioner of Insurance.

(5) (A) Any transactions within an insurance holding company system by insurers with their holding companies, subsidiaries or affiliates that are not prohibited by law, that meet the test of being fair and proper, and that are regulated by other statutes; and (B) other transactions or arrangements not prohibited by law that meet the test of being fair and proper as prescribed by rules and regulations adopted by the State Board of Insurance.

Revisor's Note

(1) Section 1(c)(1), V.T.I.C. Article 1.29, refers to a policyholder "enjoying the usual rights of a policyholder" The revised law substitutes "exercising" for "enjoying" because the terms are synonymous in context and the former is more commonly used.

(2) Section 1(c)(5)(B), V.T.I.C. Article 1.29, refers to "rules and regulations." The revised law omits the reference to "regulations" because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

(3) Sections 1(c)(4) and 1(c)(5)(B), V.T.I.C. Article 1.29, refer to the "Commissioner of Insurance" and the "State Board of Insurance," respectively. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the

commissioner of insurance and the Texas Department of Insurance. The revised law is drafted accordingly.

[Sections 805.005-805.020 reserved for expansion]

SUBCHAPTER B. CERTAIN PAYMENTS BY DIRECTORS, OFFICERS, AND
TRUSTEES

Revised Law

Sec. 805.021. LIABILITY FOR FEE AND TAX PAYMENTS. (a) In this section, "fee or tax" includes a license, excise, privilege, premium, or occupation fee or tax.

(b) A director, officer, or trustee of an insurer is not personally liable, in complying with the law, for the payment of or for the determination not to contest the payment of a fee or tax to a state or a political subdivision of a state that the board of directors or trustees considers to be in the corporate interest of the insurer.

(c) Subsection (b) does not apply if, before the payment of the fee or tax, the state court of final appellate jurisdiction or the United States Supreme Court expressly holds that the law imposing the fee or tax is invalid.

(d) This section does not directly or indirectly limit, minimize, or interpret the rights and powers of an insurer or the directors, officers, or trustees of an insurer. (V.T.I.C. Art. 21.37.)

Source Law

Art. 21.37. No officer, trustee, or director of any insurer shall, in complying with the statutes, be subject to any personal liability by reason of any payment, or determination not to contest payment, deemed by the board of directors or trustees to be in the corporate interest of such insurer, of any license, excise, privilege, premium, occupation, or other fee or tax to any State, territory, or political subdivision thereof, unless prior to such payment the statute, ordinance, or other law imposing such fee or tax shall have been expressly held invalid by the State Court having final appellate jurisdiction in the premises, or by the Supreme Court of the United States; provided,

however, that nothing contained herein shall be construed as directly or indirectly limiting, minimizing, or interpreting the rights and powers of insurers and their officers, trustees, and directors heretofore existing.

Revisor's Note

(1) V.T.I.C. Article 21.37 refers to a "State, [or] territory" The revised law omits the reference to "territory" as unnecessary because Section 311.005(7), Government Code (Code Construction Act), defines "state," when referring to a part of the United States, to include any territory of the United States. That definition applies to the revised law.

(2) V.T.I.C. Article 21.37 refers to a "statute, ordinance, or other law." The revised law omits the references to "statute" and "ordinance" because "law" is defined as a body of rules of action or conduct prescribed by a controlling authority and having binding legal force, and "statute" and "ordinance" are included within the scope of that definition.

[Chapters 806-820 reserved for expansion]

SUBTITLE B. ORGANIZATION OF REGULATED ENTITIES

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CHAPTER 821. GENERAL PROVISIONS

SUBCHAPTER A. MINIMUM INSURANCE TO BE MAINTAINED BY INSURER

Revised Law

Sec. 821.001. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to any insurer that is required by law to hold

a certificate of authority issued by the department, including:

- (1) a domestic insurance company;
- (2) a mutual life insurance company;
- (3) a statewide mutual assessment company;
- (4) a mutual insurance company other than a life insurance company operating under Chapter 883;
- (5) a Lloyd's plan;
- (6) a reciprocal or interinsurance exchange; and
- (7) a title insurance company.

(b) This subchapter does not apply to:

(1) an insurer before the second anniversary of the date the insurer's original certificate of authority is issued; or

(2) an insurer that was paid more than \$50,000 in gross premium income by policyholders during the preceding accounting year of the insurer. (V.T.I.C. Art. 21.45, Sec. 1 (part).)

Source Law

Art. 21.45

Sec. 1. Every domestic insurance company, corporation, mutual life insurance company, state-wide mutual assessment company, mutual insurance company other than life operating under and governed by the provisions of Chapter 15 of the Insurance Code, Lloyds, reciprocal or interinsurance exchange, title insurance company, or other insurer which is by law required to be licensed by the Board of Insurance Commissioners of the State of Texas . . . provided, however, that the provisions of this Act shall not apply to any such insurer which has had paid to it by Policy Holders gross premium income in excess of Fifty Thousand Dollars (\$50,000) during its last preceding accounting year, or until two (2) years after its original certificate of authority has been issued; and

Revisor's Note

(1) Section 1, V.T.I.C. Article 21.45, refers to an "insurance company" and a "corporation." The revised law omits the reference to "corporation" as unnecessary because the meaning of that term is included within the meaning of "company."

(2) Section 1, V.T.I.C. Article 21.45, refers to a mutual insurance company "operating under and governed by the provisions of Chapter 15 of the Insurance Code." The revised law omits "governed by" as unnecessary because a company operating under a chapter is necessarily governed by that chapter.

(3) Section 1, V.T.I.C. Article 21.45, refers to an insurer "required to be licensed." The revised law substitutes "required to hold a certificate of authority" for "required to be licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

(4) V.T.I.C. Article 21.45 refers to the "Board of Insurance Commissioners." Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Chapter 31 defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and Texas Department of Insurance, respectively. Throughout this chapter, references to the Board of Insurance Commissioners or the State Board of Insurance have been changed appropriately.

(5) Section 1, V.T.I.C. Article 21.45, refers to "its last preceding accounting year," meaning the last preceding accounting year of an insurer. The revised law substitutes "the preceding accounting year of the insurer" for "its last preceding accounting year."

Revised Law

Sec. 821.002. EXEMPTIONS. This subchapter does not apply to:

- (1) a fraternal benefit society operating under Chapter 885;
- (2) a local mutual aid association or local mutual burial association operating under Chapters 886, 887, and 888;
- (3) a statewide mutual assessment company or association operating under Chapters 881, 887, or 888;
- (4) another association operating under Subchapter C, Chapter 887;
- (5) a farm mutual insurance company operating under Chapter 911; or
- (6) a county mutual fire insurance company operating under Chapter 912. (V.T.I.C. Art. 21.45, Sec. 3.)

Source Law

Sec. 3. The local mutual aid associations and local mutual burial associations authorized to transact business under Chapters 12 and 14 of the Insurance Code, state-wide mutual assessment companies or associations authorized to transact business under Chapters 13 and 14 of the Insurance Code, farm mutual insurance companies authorized to transact business under Chapter 16 of the Insurance Code, county mutual fire insurance companies authorized to transact business under Chapter 17 of the Insurance Code, fraternal benefit societies authorized to transact business under Chapter 10 of the Insurance Code, and those associations which are authorized to transact business under the provisions of Article 14.17 of the Insurance Code, shall be exempt from the provisions of this Article.

Revised Law

Sec. 821.003. MINIMUM REQUIREMENTS. An insurer must maintain at all times not less than 100 policyholders or certificate holders nor less than \$200,000 of insurance that the insurer has written or acquired through reinsurance contracts.

(V.T.I.C. Art. 21.45, Sec. 1 (part).)

Source Law

Sec. 1. [Every domestic insurance company, corporation, mutual life insurance company, state-wide mutual assessment company, mutual insurance company other than life operating under and governed by the provisions of Chapter 15 of the Insurance Code, Lloyds, reciprocal or interinsurance exchange, title insurance company, or other insurer which is by law required to be licensed by the Board of Insurance Commissioners of the State of Texas,] shall maintain in force at all times not less than one hundred (100) Policy Holders or Certificate Holders nor less than Two Hundred Thousand Dollars (\$200,000) of insurance which has been written by said insurer or which has been acquired through reinsurance contracts;

Revised Law

Sec. 821.004. REPORT TO ATTORNEY GENERAL; SUIT AGAINST INSURER. (a) The department shall report to the attorney general an insurer's failure to comply with this subchapter.

(b) On receiving a report under Subsection (a), the attorney general shall bring suit in a district court in Travis County against the insurer to cancel, forfeit, and revoke the insurer's:

(1) charter, articles of association, or articles of agreement; and

(2) certificate of authority. (V.T.I.C. Art. 21.45, Sec. 2.)

Source Law

Sec. 2. The Board of Insurance Commissioners shall report to the Attorney General the failure of any insurer to comply with the provisions of this Article, whereupon the Attorney General shall bring suit in any district court of Travis County, Texas, for the purpose of cancelling, forfeiting and revoking the charter, articles of association, or articles of agreement, and

for the purpose of cancelling, forfeiting and revoking the certificate of authority of any such insurer.

Revisor's Note
(End of Subchapter)

Section 1, V.T.I.C. Article 21.45, provides that, until one year after the effective date of the article, the article does not apply to an insurer that has been issued an original certificate of authority before the effective date of the article. The revised law omits that provision as executed law because Article 21.45, which took effect on September 5, 1955, has been in effect for more than one year and now applies to any insurer not otherwise excepted whose original certificate of authority was issued before that date. The omitted law reads:

Sec. 1. . . . further provided that the provisions of this Act shall not take effect as to any insurer which has heretofore been issued an original certificate of authority until one (1) year after the effective date of this Act.

[Sections 821.005-821.050 reserved for expansion]

SUBCHAPTER B. ASSOCIATION OF INSURANCE COMPANIES

Revised Law

Sec. 821.051. PAYMENT OF TAXES AND FEES; COMPLIANCE WITH LAW. (a) Life, health, fire, marine, or inland marine insurance companies that associate to issue or sell insurance policies may not engage in the business of insurance in this state until each company has:

(1) paid the company's taxes and fees that are due;
and

(2) complied with all requirements of law.

(b) The commissioner may not authorize to engage in the business of insurance in this state an insurance company that does not comply with Subsection (a). (V.T.I.C. Art. 21.34.)

Source Law

Art. 21.34. In the event that any number of insurance companies, whether life, health, fire, marine or inland, should associate themselves together for the purpose of issuing or vending policies or joint policies of insurance, such association shall not be permitted to do business in this State until the taxes and fees due from each of said companies shall have been paid and all the conditions of the law fully complied with by each company; and any company failing or refusing to pay such taxes and fees, and to fully comply with the requirements of law, shall be refused permission by the Board to do business in this State.

Revisor's Note

V.T.I.C. Article 21.34 refers to "marine or inland" insurance companies. The revised law substitutes "inland marine" for "inland" because "inland marine insurance" is the phrase more commonly used in the insurance industry.

CHAPTER 822. GENERAL INCORPORATION AND REGULATORY
REQUIREMENTS FOR INSURANCE COMPANIES OTHER THAN
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CHAPTER 822. GENERAL INCORPORATION AND REGULATORY
REQUIREMENTS FOR INSURANCE COMPANIES OTHER THAN
LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANIES
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 822.001. APPLICABILITY OF CHAPTER. Except as otherwise provided by this code, this chapter applies to the formation of each company or organization that proposes to engage in any kind of insurance business other than a life, health, or accident insurance company organized or operating under Chapter 841, 881, 882, 884, 885, 886, 887, or 888. (V.T.I.C. Art. 2.01, Subsec. (a); Art. 2.18 (part).)

Source Law

Art. 2.01. (a) The provisions of this Chapter shall apply to the formation of each company or organization which proposes to engage in any kind of insurance business, other than life, health or accident insurance companies organized or operating under the provisions of Chapters 3, 10, 11, 12, 13, 14, or 22 of this Code; and except as in this Code otherwise provided.

Art. 2.18. . . . None of the provisions of this Chapter 2 shall apply to insurance companies organized or operating under the provisions of Chapter 3 or Chapter 11 of this Code, and Chapters 10, 12, 13, or 14 of this Code.

Revisor's Note

Subsection (a), V.T.I.C. Article 2.01, refers to Chapter 3 of this code. The pertinent portions of Chapter 3 relating to the formation of domestic life, health, and accident insurance companies are revised in Chapter 841. The revised law is drafted accordingly.

Revised Law

Sec. 822.002. APPLICABILITY OF LAW GOVERNING CORPORATIONS. An insurance company incorporated in this state is subject to the Texas Business Corporation Act, the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), and any other law of this state that governs corporations in general to the extent those laws are not inconsistent with this code. (V.T.I.C. Art. 2.18 (part).)

Source Law

Art. 2.18. The laws governing corporations in general shall apply to and govern insurance companies incorporated in this State in so far as the same are not inconsistent with any provision of this Code. . . .

Revisor's Note

V.T.I.C. Article 2.18 refers to "laws governing corporations in general." For the convenience of the reader, the revised law adds references to the Texas Business Corporation Act and the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), which are laws that govern corporations in general.

Revised Law

Sec. 822.003. EFFECT ON TRANSACTIONS BETWEEN INSURANCE COMPANIES AND OTHERS. The following sections do not restrict or modify any provision of this code relating to a transaction between an insurance company and the insurance company's affiliates, or between an insurance company and certain shareholders, directors, or officers of the insurance company, as provided by Subchapter A, Chapter 805, and Chapter 823:

- (1) Sections 822.055 and 822.056;
- (2) Section 822.057(a)(4);
- (3) Section 822.061;
- (4) Section 822.156;
- (5) Sections 822.158(d) and (e); and
- (6) Sections 822.206 and 822.207. (V.T.I.C. Art. 2.07, Sec. 7(c).)

Source Law

(c) No provision of this article shall be deemed to restrict or modify the provisions in the Insurance Code relative to transactions between an insurer and its affiliates, certain shareholders, directors and officers as defined and limited by Chapter 1037, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1.29, Vernon's Texas Insurance Code), and Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), as the same now exist or may be amended in the future.

Revisor's Note

Section 7(c), V.T.I.C. Article 2.07, refers to "Chapter 1037, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1.29, Vernon's Texas Insurance Code), and Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), as the same now exist or may be amended in the future." The pertinent parts of those articles are revised as Subchapter A, Chapter 805, and Chapter 823, respectively. The revised law is drafted accordingly. The

revised law omits the phrase "as the same now exist or may be amended in the future" because Section 311.027, Government Code (Code Construction Act), applicable to the revised law, states that a reference to a statute includes reenactments, revisions, or amendments of the statute.

Revisor's Note
(End of Subchapter)

(1) V.T.I.C. Article 2.03-1 provides that "[l]ive stock insurance companies organized prior to April 1, 1955 under the provisions of Article 2.03 of the Insurance Code and continuing to do a live stock insurance business only" are exempt from the provisions of this code. The original provision of V.T.I.C. Article 2.03, which provided for the organization of livestock insurance companies, was amended by Section 6, Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, to incorporate the provisions relating to amendments to charters now contained in V.T.I.C. Article 2.03. The effect of the amendment is to repeal by omission the original provisions of Article 2.03. The subject of livestock insurance companies was addressed by Section 12a of the 1955 amendment, the provision enacting V.T.I.C. Article 2.03-1. Article 2.03-1 is omitted from the revised law because, according to the records of the Texas Department of Insurance, no livestock insurance company exists that continues to write livestock insurance exclusively. The omitted law reads:

Art. 2.03-1. Live stock insurance companies organized prior to April 1, 1955 under the provisions of Article 2.03 of the Insurance Code and continuing to do a live stock insurance business only shall be exempt from the provisions of this Act.

(2) V.T.I.C. Article 2.19 prohibits the incorporation of certain companies mentioned in "Acts of 1923 of the 38th Legislature, Chapter 157, page 336, being Article 4698, Revised Civil Statutes of 1925." Section 1 of Chapter 157 describes certain cooperative savings and contract loan companies that were required to be dissolved by that same section not later than the

10th anniversary of the date on which that Act was passed. The revised law omits V.T.I.C. Article 2.19 as unnecessary because this chapter does not purport to authorize the formation of a cooperative savings and contract loan company. The omitted law reads:

Art. 2.19. There shall not be incorporated any such Co-operative Savings and Contract Loan Companies as are mentioned in Acts of 1923 of the 38th Legislature, Chapter 157, page 336, being Article 4698, Revised Civil Statutes of 1925.

[Sections 822.004-822.050 reserved for expansion]
SUBCHAPTER B. FORMATION AND STRUCTURE OF COMPANY

Revised Law

Sec. 822.051. FORMATION OF COMPANY. (a) Any number of persons may form a company for the purpose of engaging in the business of insurance.

(b) To form a company, each incorporator must adopt and sign the articles of incorporation of the company as provided by this code. (V.T.I.C. Art. 2.01, Subsec. (b) (part).)

Source Law

(b) Any number of persons desiring to form a company for the purpose of transacting insurance business shall adopt and sign Articles of Incorporation as provided in this Code. . . .

Revisor's Note

Subsection (b), V.T.I.C. Article 2.01, refers to "persons desiring to form a company." Throughout this chapter, the revised law substitutes the term "incorporators" for "persons desiring to form a company" or "corporators" for drafting convenience and for consistency with modern usage and other provisions of this code.

Revised Law

Sec. 822.052. ARTICLES OF INCORPORATION. Articles of incorporation of a proposed insurance company must state:

(1) the name of the company;

(2) the location of the company's principal business office;

(3) the kind of insurance business in which the company proposes to engage;

(4) the amount of the company's capital stock; and

(5) the amount of the company's surplus. (V.T.I.C. Art. 2.02, Subsec. (a) (part).)

Source Law

Art. 2.02. (a) Such Articles of Incorporation shall contain:

1. The name of the company; . . .

2. The locality of the principal business office of such company;

3. The kind of insurance business in which the company proposes to engage; . . .

4. The amount of its capital stock and its surplus
.

Revised Law

Sec. 822.053. COMPANY'S NAME. An insurance company's name may not be so similar to the name of another insurance company as to likely mislead the public. (V.T.I.C. Art. 2.02, Subsec. (a) (part).)

Source Law

(a) . . .

1. . . . the name selected may not be so similar to the name of any other insurance company as to be likely to mislead the public;

. . .

Revised Law

Sec. 822.054. CAPITAL STOCK AND SURPLUS REQUIREMENTS. (a) An insurance company must have capital stock in an amount of at least \$1 million and surplus in an amount of at least \$1 million.

(b) At the time of incorporation, the required capital and surplus must be in cash. (V.T.I.C. Art. 2.02, Subsecs. (a) (part), (d).)

Source Law

(a) . . .

. . .

4. [The amount of its capital stock and its surplus,] which shall in no case be less than \$1 million capital and \$1 million surplus.

(d) At the time of incorporation all of said capital and surplus shall be in cash.

Revised Law

Sec. 822.055. SHARES OF STOCK WITH PAR VALUE. (a) An insurance company organized under the laws of this state may authorize the issuance of shares of stock with a par value of not less than \$1 or more than \$100. The company may increase from time to time the number of shares with a par value by an amendment to the company's charter.

(b) Each par value share of stock must be fully paid before issuance in an amount that is not less than the share's par value. Par value shares issued under this section are not subject to additional call or assessment, and the subscriber or holder of those shares is not required to make an additional payment with respect to those shares.

(c) When an application for charter or an amendment to the charter authorizing the issuance of shares of stock with a par value is filed, the insurance company shall file with the department a statement under oath stating:

(1) the total number of par value shares subscribed;
and

(2) the actual total consideration the company received for those shares.

(d) The shareholders of an insurance company authorizing

par value shares of stock must in good faith subscribe and fully pay for shares representing at least 50 percent of the total par value of the authorized shares with a par value before the company:

- (1) is granted a charter; or
- (2) amends its charter to:
 - (A) authorize the issuance of par value shares;

or

- (B) increase or decrease from time to time the number of authorized par value shares.

(e) If all of the authorized par value shares of stock are not subscribed and paid for when the charter is granted or the amendment is filed, respectively, the insurance company shall file with the department a certificate authenticated by a majority of the directors stating the total number of shares issued and the total consideration received for those shares. The company shall file the certificate not later than the 90th day after the date of issuance of those remaining shares. The company is not required to file an amendment to its charter or take further action to effect the increase in the capital and surplus of the company.

(f) The consideration received by an insurance company for a par value share constitutes capital to the extent of its par value and the remainder, if any, constitutes surplus. (V.T.I.C. Art. 2.07, Secs. 1(a), (b), (c).)

Source Law

Sec. 1. (a) The shares of any insurance company organized under the laws of this State, if shares with a nominal or par value, shall be divided into shares of not less than One Dollar (\$1) each, and not more than One Hundred Dollars (\$100) each and the stockholders of any such company authorizing the issuance of its stock with a nominal or par value shall be required in good faith to subscribe and fully pay for shares representing at least fifty per cent (50%) of the aggregate par value of the shares authorized to be issued with a nominal or par value before said

company shall be chartered or have its charter amended so as to authorize the issuance of shares with a nominal or par value. At the time of filing of an original charter or any amendment of an existing charter authorizing issuance of stock of a nominal or par value, the company shall file a statement under oath with the State Board of Insurance setting forth the aggregate number of shares with a nominal or par value subscribed and the actual aggregate consideration received by the company for such shares. Any and all such shares with a nominal or par value issued in accordance with the provisions of this Section shall be fully paid stock and not liable to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments. The consideration received for such shares shall constitute capital to the extent of the par value of such share, and the excess, if any, of such consideration shall constitute surplus. In no event shall the capital or surplus be less than the minimum required by this Chapter.

(b) In the event all of the shares with a nominal or par value, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares with nominal or par value are sold and issued, the company shall file with the State Board of Insurance, within ninety (90) days after the issuance of such shares a certificate authenticated by the majority of the directors setting forth the aggregate number of such additional shares so issued and the actual aggregate consideration received by the company for such shares. The consideration received for such shares shall constitute capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute surplus. All shares with a nominal or par value issued by the company shall be fully paid for prior to issuance at a rate of not less than the par value thereof. No further act on the part of the company and no charter amendment shall be necessary to effect the increase in capital or surplus, or both, of the company.

(c) The aggregate number of shares which the company has authority to issue may be increased or decreased from time to time by lawful charter amendment as long as shares representing at least fifty per cent (50%) of the aggregate par value of the shares authorized to be issued with a nominal or par value is in good faith subscribed and paid for in full.

Revisor's Note

(1) Section 1, V.T.I.C. Article 2.07, refers to shares with a "nominal or par value." The revised law omits the term "nominal" because, in context, the terms are synonymous and "par value" is more commonly used.

(2) Section 1(a), V.T.I.C. Article 2.07, refers to the "State Board of Insurance." Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the "State Board of Insurance" or the board have been changed to "commissioner" or "department," as appropriate.

(3) Section 1(a), V.T.I.C. Article 2.07, provides that "[i]n no event shall the capital or surplus be less than the minimum required by this Chapter." The revised law omits the quoted language as unnecessary because it duplicates the minimum capital and surplus requirements of V.T.I.C. Article 2.02(a), revised in pertinent part as Section 822.054.

(4) Section 1(c), V.T.I.C. Article 2.07, provides for a change in the number of authorized shares by "lawful charter amendment." The revised law omits the word "lawful" as unnecessary because it does not add to the clear meaning of the law.

Revised Law

Sec. 822.056. SHARES OF STOCK WITHOUT PAR VALUE. (a) An insurance company organized under the laws of this state, on incorporation or by an amendment to its charter, may authorize the issuance of shares of stock without par value.

(b) Each share of stock without par value must be equal in all respects.

(c) An insurance company may issue and dispose of authorized shares without par value for money or for notes, bonds, mortgages, and stock in the form authorized by law for capital stock of insurance companies. Each share of stock without par value must be fully paid before issuance. After the company receives payment for a share of stock issued under this section, the share is not subject to additional call or assessment and the subscriber or holder of the share is not required to make an additional payment with respect to the share.

(d) The shareholders of an insurance company authorizing shares of stock without par value must in good faith subscribe and pay for shares representing at least 50 percent of the authorized shares without par value before the company is granted a charter or has its charter amended to authorize the issuance of shares without par value. The total amount paid for the shares must be at least \$250,000.

(e) If all of the authorized shares of stock without par value are not subscribed and paid for when the charter is granted or the amendment is filed, respectively, the insurance company shall file with the department a certificate authenticated by a majority of the directors stating the number of shares without par value issued and the consideration received for those shares. An insurance company may issue and dispose of those remaining authorized shares for money or an instrument authorized for minimum capital under Section 822.204 and Article 2.10.

(f) The insurance company shall file the certificate required by Subsection (e) not later than the 90th day after the date of issuance of those remaining shares. The portion of the consideration received for shares without par value that is

designated as capital by the company's directors, or by the company's shareholders if the charter or articles of incorporation reserve the right to make that determination to the shareholders, constitutes capital and the remainder, if any, constitutes surplus. The company is not required to file an amendment to its charter or take further action to effect the increase in the capital and surplus of the company. (V.T.I.C. Art. 2.07, Secs. 2, 3, 5.)

Source Law

Sec. 2. Upon the incorporation or upon the amendment of the charter in the manner now or hereafter provided by law, of any insurance company organized under the laws of this State, provision may be made for the issuance of shares of its stock without a nominal or par value. Every such share shall be equal in all respects to every other such share; provided, however, that the stockholders of any such company authorizing the issuance of its stock without nominal or par value, shall be required in good faith to subscribe and pay for at least fifty (50) per cent of the authorized shares to be issued without nominal or par value, before said corporation shall be chartered or have its charter amended so as to authorize the issuance of shares without nominal or par value; and provided further that in no event shall the amount so paid be less than Two Hundred Fifty Thousand (\$250,000.00) Dollars.

Sec. 3. Such companies may issue and dispose of their authorized shares having no nominal or par value for money or those notes, bonds, mortgages and stocks of which the law requires that capital stock of insurance companies shall consist. Any and all shares without nominal or par value issued for the consideration prescribed or fixed in accordance with the provisions of this Section shall be fully paid stock and not liable to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments.

Sec. 5. In the event all of the shares of stock without

nominal or par value, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted or the amendment is filed, then when such remaining shares of stock without nominal or par value are sold and issued, the company shall file with the Board, within ninety (90) days after the issuance of such shares a certificate authenticated by a majority of the directors setting forth the number of such shares so issued and the actual consideration received by the company for such shares. That portion of the consideration received by the company for such shares and fixed by the Board of Directors, unless the charter or articles of incorporation reserve to the shareholders the right to fix the consideration, shall constitute capital, and the excess, if any, of such consideration shall constitute surplus. No further action on the part of the company and no charter amendment shall be necessary to effect the increase in capital or surplus, or both, of the company. The consideration received for such shares shall be the same as that required by Article 2.03, Section 5 of this Code.

Revisor's Note

Section 5, V.T.I.C. Article 2.07, refers to the consideration for shares "required by Article 2.03, Section 5 of this Code." Section 5, Article 2.03, provides that "[t]he property involved in any increase of capital or surplus or both is properly valued and is as authorized by Article 2.08 or Article 2.10 of this Code, as same may be applicable." Section 5, V.T.I.C. Article 2.07, thus, requires that the form of consideration received for shares under that section must be the same as the form property may take under V.T.I.C. Article 2.08 or 2.10. Article 2.08 is revised as Section 822.204. V.T.I.C. Article 2.10 has yet to be revised in this code. The revised law is drafted accordingly.

Revised Law

Sec. 822.057. APPLICATION FOR CHARTER. (a) To obtain a charter for an insurance company, the incorporators must pay to

the department the fees prescribed by law and file with the department:

- (1) an application for charter on the form and containing the information prescribed by the commissioner;
- (2) the company's proposed articles of incorporation;
- (3) an affidavit made by the incorporators or officers of the company that states that:

- (A) the capital and surplus is the bona fide property of the company; and

- (B) the information in the articles of incorporation is true and correct; and

- (4) if the application provides for the issuance of shares of stock without par value, a certificate authenticated by the incorporators stating:

- (A) the number of shares without par value that are subscribed; and

- (B) the actual consideration received by the company for those shares.

(b) If the commissioner is not satisfied with the affidavit filed under Subsection (a)(3), the commissioner may require that the incorporators provide at their expense additional evidence of a matter required in the affidavit before the commissioner:

- (1) receives the proposed articles of incorporation or the application for charter;

- (2) provides notice of a hearing on the application for charter or holds a hearing; or

- (3) issues a certificate of authority to the company.

(c) The commissioner may not delay providing notice of a hearing on the application for charter for more than 10 days.

(V.T.I.C. Art. 2.01, Subsec. (b) (part); Art. 2.05; Art. 2.07, Sec. 4 (part).)

Source Law

[Art. 2.01]

(b) . . . Applicants shall file with the Board an application for charter on such form and include therein such

information as may be prescribed by the Board, including the affidavit or affidavits provided by Article 2.05, and the proposed Articles of Incorporation or of Association, and shall deposit with the Board the fees prescribed by law.

Art. 2.05. The incorporators or officers of any such company shall be required to certify under oath to the Board the truth and correctness of the facts set out in the Articles of Incorporation and in addition shall certify under oath to the Board that the capital and surplus is the bona fide property of such company.

If the Board is not satisfied in either event above, it may at the expense of the incorporators require other satisfactory evidence before it shall be required to receive the Articles of Incorporation, or application for charter, or give notice of hearing or hold same, or issue original Certificate of Authority, but may not delay the giving of notice of such hearing for more than ten days.

[Art. 2.07]

Sec. 4. Insurance companies authorizing the issuance of shares of their stock without a nominal or par value, shall furnish to and file with the Board at the time of the filing of the charter or . . . authorizing the issuance of such stock, a certificate authenticated by the incorporators as to the original charter and . . . setting forth the number of shares without nominal or par value subscribed, and the actual consideration received by the company for such shares. . . .

Revisor's Note

(1) Subsection (b), V.T.I.C. Article 2.01, refers to "the proposed Articles of Incorporation or of Association." In the context of the Insurance Code, articles of association are used to describe certain organizational documents of certain types of fraternal benefit societies under Chapter 10, local mutual aid associations under Chapter 12, and joint underwriting

associations under Article 21.49-3b. V.T.I.C. Article 2.01(a), revised as Section 822.001, states that this chapter does not apply to the formation of fraternal benefit societies or of local mutual aid associations. Joint underwriting associations are not corporate entities and this chapter does not apply to their formation. Consequently, the revised law omits the reference to articles of association as unnecessary.

(2) V.T.I.C. Article 2.05 refers to an "original Certificate of Authority." The revised law omits "original" as unnecessary because, in the context of the revised law, it is clear that the certificate of authority that is the subject of the application is an original, not amended, certificate.

Revised Law

Sec. 822.058. ACTION BY COMMISSIONER AFTER FILING OF APPLICATION FOR CHARTER. (a) On receipt of an application for the charter of an insurance company, the commissioner may set the date for a hearing on the application.

(b) After the items required for a charter under Sections 822.057(a)(1) and (2) are filed with the department and the proposed insurance company has complied with all legal requirements and before any hearing, the commissioner shall conduct an examination of the company to determine whether:

(1) the minimum capital stock and surplus requirements of Section 822.054 are satisfied;

(2) the capital stock and surplus is the bona fide property of the company; and

(3) the insurance company has fully complied with insurance laws.

(c) The commissioner may appoint a competent and disinterested person to conduct the examination required by this section. The examiner shall file an affidavit of the examiner's findings with the commissioner. The commissioner shall record the affidavit. (V.T.I.C. Art. 2.01, Subsec. (c) (part); Art. 2.04; Art. 2.06.)

Source Law

[Art. 2.01]

(c) Upon receipt of such application, the Board may set a date for the hearing of the same

Art. 2.04. When the Articles of Incorporation and Application for Charter of persons desiring to form a company under this Chapter have been deposited with the Board, and the law in all other respects has been complied with by the company, prior to the hearing provided by Article 2.01, the Board shall make or cause an examination to be made by some competent and disinterested person or persons appointed by them for that purpose; and if it shall be found that the capital stock and surplus of the company, to the amount required by law, has been paid in, and is possessed by it, in money, and that the same is the bona fide property of such company, and that such company has in all respects complied with the law relating to insurance, the examiners or examiner shall so report to the Board.

Art. 2.06. If the examination be made by one, other than the Chairman, the finding shall be certified under the oath of the examiner. Such finding and certificate shall be filed and recorded in the office of the Chairman of the Board.

Revisor's Note

V.T.I.C. Article 2.06 refers to "the Chairman" and "the Chairman of the Board," meaning the chairman of the Board of Insurance Commissioners. Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31

defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and Texas Department of Insurance, respectively. Throughout this chapter, references to the Board of Insurance Commissioners and the State Board of Insurance have been changed appropriately.

Revised Law

Sec. 822.059. ACTION ON APPLICATION FOR CHARTER. (a) The date for a hearing on an application for charter may not be before the 11th or later than the 60th day after the date notice is provided under this section.

(b) The department shall publish notice to all interested parties of the place and date of a hearing in one or more daily newspapers of this state.

(c) The original report of the examination performed under Section 822.058 must be a part of the record of the proceedings of the hearing. (V.T.I.C. Art. 2.01, Subsecs. (c) (part), (d).)

Source Law

(c) . . . [the Board may set a date for the hearing of the same] notifying all interested parties by notice published in one or more daily newspapers of this State of the place and date thereof, which date shall be not less than ten (10) nor more than sixty (60) days after the date of such notice.

(d) The original examination report provided by Article 2.04 shall be a part of the record of the hearing.

Revised Law

Sec. 822.060. ACTION ON APPLICATION. (a) In considering the application, the commissioner, not later than the 30th day after the date on which a hearing under Section 822.057 is completed, shall determine if:

(1) the proposed capital structure of the company meets the requirements of this code;

(2) the proposed officers, directors, attorney in fact, or managing head of the company have sufficient insurance

experience, ability, standing, and good record to make success of the proposed company probable; and

(3) the applicants are acting in good faith.

(b) If the commissioner determines by an affirmative finding any of the issues under Subsection (a) adversely to the applicants, the commissioner shall reject the application in writing, giving the reason for the rejection.

(c) If the commissioner does not reject the application under Subsection (b), the commissioner shall approve the application. On approval of an application, the articles of incorporation of the company shall be filed with the department. (V.T.I.C. Art. 2.01, Subsecs. (e), (f).)

Source Law

(e) In considering any such application, the Board shall, within thirty (30) days after public hearing, determine whether or not:

1. The proposed capital structure meets the minimum requirements of this Code;

2. The proposed officers and directors, attorney in fact or managing head have sufficient insurance experience, ability, standing and good record to render success of the proposed insurance company probable;

3. The applicants are acting in good faith.

(f) Should the Board by an affirmative finding determine any of the above issues adversely to the applicants, it shall reject the application in writing giving the reason therefor. Otherwise such Board shall approve the application, whereupon such Articles shall be deposited with the Board.

Revisor's Note

Subsection (e), V.T.I.C. Article 2.01, refers to a "public hearing" of the former State Board of Insurance. Throughout this chapter, the revised law omits "public" as unnecessary. In context, "hearing" means a hearing open to the public.

Revised Law

Sec. 822.061. ISSUANCE OF CHARTER. (a) On receipt of a charter fee in the amount determined under Article 4.07, the commissioner shall examine the articles of incorporation filed with the department under Section 822.060 and any certificate filed under Section 822.057(a)(4).

(b) If the commissioner approves the articles of incorporation and, if applicable, the certificate filed under Section 822.057(a)(4), the commissioner shall certify and file the approved documents with the department records and, on receipt of a fee in the amount determined under Article 4.07, the commissioner shall issue a certified copy of the charter to the incorporators.

(c) When the insurance company's charter is issued, the charter is effective and the incorporators may proceed with the organization of the company as provided by this code. (V.T.I.C. Art. 2.07, Sec. 4 (part).)

Source Law

Sec. 4. . . . Upon receiving such certificate, together with a charter fee as provided by Article 4.07 of this Code, the Board shall examine the certificate and articles of incorporation, and if the Board approves the certificate and articles, it shall certify them and file them with the Board records. Upon receipt of proper payment, the Board shall furnish a certified copy of the charter to the incorporators or . . . same shall be effective. In case of original incorporation, said companies shall proceed to organize in the manner now provided by law for the organization of insurance companies.

Revisor's Note

Section 4, V.T.I.C. Article 2.07, refers to the receipt of "proper payment" for providing a certified copy of the charter to the incorporators. V.T.I.C. Article 4.07 is a comprehensive fee provision that authorizes the Texas Department of Insurance to set the amounts of various fees, including a fee for making

copies of any paper of record in the Texas Department of Insurance. Accordingly, the revised law substitutes a general reference to a fee in the amount determined under V.T.I.C. Article 4.07.

[Sections 822.062-822.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Revised Law

Sec. 822.101. CERTIFICATE OF AUTHORITY. When the articles of incorporation of an insurance company have been filed with the department under Section 822.060 or the company has been authorized to engage in business as provided by law, the commissioner shall issue to the company a certificate of authority to commence business as proposed in the company's articles of incorporation or application for charter if the commissioner determines that the company has fully complied with the law. (V.T.I.C. Art. 2.21.)

Source Law

Art. 2.21. When the said Articles of Incorporation have been deposited with the Board, or when the right to do business has been approved as provided by law, and the law in all other respects has been complied with by the company, the Board shall issue to such company a Certificate of Authority to commence business as proposed in their Articles of Incorporation or application or declaration.

Revisor's Note

V.T.I.C. Article 2.21 refers to an insurance company's "declaration." In the Insurance Code, the term "declaration" is used to refer to a subscriber's declarations, which are documents related to the formation of reciprocal or interinsurance exchanges. V.T.I.C. Article 19.12, revised as Section 942.003, provides that, with certain exceptions, this chapter does not apply to the formation of reciprocal or interinsurance exchanges. Accordingly, the revised law omits the reference to "declaration" as unnecessary.

[Sections 822.102-822.150 reserved for expansion]

SUBCHAPTER D. MANAGEMENT OF COMPANY

Revised Law

Sec. 822.151. CONDUCTING SHAREHOLDERS MEETING. (a) Except as otherwise provided by this code, at a meeting of an insurance company's shareholders to elect the company's board of directors or to transact other company business, a quorum is any number of shareholders whose cumulative ownership in the company represents at least 51 percent of the company's stock.

(b) A shareholder may vote in person or by proxy. (V.T.I.C. Art. 2.13.)

Source Law

Art. 2.13. Except as may be otherwise provided in this code, no meeting of stockholders shall elect directors or transact such other business of the company, unless there shall be present, in person or by proxy, a majority in value of the stockholders equal to fifty-one percent of the stock of such company.

Revisor's Note

(1) V.T.I.C. Article 2.13 provides that "no meeting of stockholders shall elect directors or transact such other business of the company, unless there shall be present" a certain majority in value of shareholders. The revised law adds a reference to the term "quorum," which means the number of persons or votes necessary for a body to act, for drafting convenience and consistency with other provisions of this code.

(2) V.T.I.C. Article 2.13 provides that the shareholders of an insurance company may not act at a meeting unless there is present "a majority in value of the stockholders equal to fifty-one percent of the stock of such company." The revised law omits "majority" as unnecessary because 51 percent is clearly a majority.

Revised Law

Sec. 822.152. BOARD OF DIRECTORS. (a) An insurance company organized under the laws of this state is managed by its board of

directors.

(b) The board consists of not fewer than seven directors.

A director:

(1) is not required to be a shareholder unless such a qualification is required by the articles of incorporation or bylaws of the company; and

(2) serves until the director's successor is elected and accepts the position.

(c) The board of directors may adopt bylaws and regulations as necessary to conduct the company's business. A majority of the board is a quorum.

(d) The board of directors shall keep a full and correct record of the board's transactions. The shareholders or other interested persons may inspect those records during business hours.

(e) The directors shall fill a vacancy that occurs on the board or in any office of the company. (V.T.I.C. Arts. 2.11 (part), 2.12 (part), 2.15, 2.16, 2.17.)

Source Law

Art. 2.11. The affairs of any insurance companies organized under the laws of this state shall be managed by not fewer than seven (7) directors. . . . The directors then in office shall continue in office until their successors have been duly chosen and accepted the trust. . . . Neither directors nor . . . need be stockholders unless the Articles of Incorporation or bylaws so require.

Art. 2.12. . . . The directors chosen at such special meeting shall continue in office until their successors are duly elected and have accepted.

Art. 2.15. The directors may establish such by-laws and regulations, not inconsistent with law, as shall appear to them necessary for regulating and conducting the business of the company.

Art. 2.16. The directors shall keep a full and correct

record of their transactions, to be open during business hours to the inspection of stockholders and others interested therein.

Art. 2.17. The directors shall fill any vacancy which occurs in the board or in any office of such company. A majority of the board shall be a quorum for the transaction of business.

Revisor's Note

(1) V.T.I.C. Article 2.15 provides that the directors may establish bylaws and regulations "not inconsistent with law." The revised law omits the quoted language as unnecessary because the law authorizing the directors to adopt bylaws and regulations cannot reasonably be read to authorize illegal bylaws or regulations.

(2) V.T.I.C. Article 2.17 provides that a majority of the board is a quorum "for the transaction of business." The revised law omits the quoted phrase as unnecessary. "Quorum" means the number of persons or votes necessary for a body to act.

Revised Law

Sec. 822.153. ELECTION OF DIRECTORS. (a) Not later than the 30th day after the date on which the company's subscription books are filed, the shareholders of an insurance company shall meet to elect the company's initial board of directors. At the meeting, each shareholder is entitled to one vote for each share of stock.

(b) The shareholders of an insurance company shall meet before May 1 of each year as provided by the company's bylaws to elect successor directors.

(c) If the shareholders do not elect directors at an annual meeting, the shareholders may elect the directors at a special shareholders meeting called for that purpose. Not later than the 30th day before the date of the special meeting, the shareholders must publish notice of the meeting in a newspaper of general circulation in the county in which the principal office of the company is located. (V.T.I.C. Arts. 2.11 (part), 2.12 (part).)

Source Law

Art. 2.11. . . . Within thirty (30) days after the subscription books of the company have been filed, a majority of the stockholders shall hold a meeting for the election of directors, each share entitling the holder thereof to one (1) vote. . . . The annual meeting for the election of directors of any such company shall be held on or before April 30 of each year as the bylaws of the company may direct. . . .

Art. 2.12. If from any cause the stockholders should fail to elect directors at an annual meeting, they may hold a special meeting for that purpose, by giving thirty (30) days' notice thereof in some newspaper in general circulation in the county in which the principal office of the company is located. . . .

Revised Law

Sec. 822.154. OFFICERS. (a) An insurance company's directors shall choose one of the directors to serve as the company's president.

(b) Other officers of the insurance company shall be chosen in accordance with the company's bylaws. An officer other than the president is not required to be a director or a shareholder unless such a qualification is required by the company's bylaws or articles of incorporation.

(c) An insurance company's officers shall perform duties, receive compensation, and provide security as stated in the company's bylaws. (V.T.I.C. Arts. 2.11 (part), 2.14.)

Source Law

Art. 2.11. . . . [Neither] . . . officers need be stockholders unless the Articles of Incorporation or bylaws so require.

Art. 2.14. The directors shall choose a president from their own number, and all other officers shall be chosen in accordance with the bylaws of the company, and none of such other

officers need be either a director or a stockholder except as required by the bylaws of such company. Officers shall perform such duties, receive such compensation and give such security as the bylaws may require.

Revised Law

Sec. 822.155. APPLICATION FOR AMENDMENT OF CHARTER. A domestic insurance company may amend its charter by paying to the commissioner a fee in the amount determined under Article 4.07 and by filing with the department:

(1) an application for a charter amendment on the form and containing the information prescribed by the commissioner; and

(2) the company's proposed amendment. (V.T.I.C. Art. 2.03 (part).)

Source Law

Art. 2.03. Any domestic insurance corporation subject to the provisions of this Chapter may make amendments to its charter as follows:

Applicants shall file with the Board the proposed amendment together with an application on such form and including such information as may be prescribed by the Board, and shall deposit with the Board the fees prescribed by law. . . .

Revisor's Note

V.T.I.C. Article 2.03 provides that a domestic insurance company must deposit with the Texas Department of Insurance "the fees prescribed by law" when it files an application for an amendment to the company's charter. V.T.I.C. Article 4.07 is a comprehensive fee provision that authorizes the department to set the amount of various fees, including a fee for the filing of an amendment to the company's charter. Accordingly, the revised law substitutes a general reference to a fee in the amount determined under V.T.I.C. Article 4.07.

Revised Law

Sec. 822.156. CERTIFICATE REQUIRED FOR AMENDMENT OF CHARTER TO AUTHORIZE SHARES WITHOUT PAR VALUE. (a) If a proposed amendment to the charter of an insurance company authorizes the issuance of shares of stock without par value, the insurance company must file with the department, at the time the proposed amendment is filed, a certificate authenticated by a majority of the directors stating:

(1) the number of shares without par value that are subscribed; and

(2) the consideration the company received for those shares.

(b) On receipt of the certificate, the commissioner shall examine the certificate. The commissioner shall certify and file the certificate if the commissioner approves the certificate.

(V.T.I.C. Art. 2.07, Sec. 4 (part).)

Source Law

Sec. 4. Insurance companies authorizing the issuance of shares of their stock without a nominal or par value, shall furnish to and file with the Board at the time of the filing of . . . amendment to the charter, authorizing the issuance of such stock, a certificate authenticated . . . by a majority of the directors as to an amendment, setting forth the number of shares without nominal or par value subscribed, and the actual consideration received by the company for such shares. Upon receiving such certificate . . . the Board shall examine the certificate . . . and if the Board approves the certificate . . . it shall certify [them] and file [them] with the Board records. . . .

Revised Law

Sec. 822.157. ACTION BY COMMISSIONER AFTER FILING OF APPLICATION FOR CHARTER AMENDMENT. (a) The commissioner may hold a hearing on an application for a charter amendment. If the commissioner determines to hold a hearing on the application, the

commissioner, after the items required for the charter amendment are filed with the commissioner, shall set a date for the hearing and publish notice of the hearing in one or more daily newspapers of this state.

(b) The commissioner may not require a hearing for an amendment relating to one or more of the following issues:

- (1) a stock dividend resulting from a legal transfer of surplus to capital;
- (2) a change in the name of the insurance company; or
- (3) a change in the location of the insurance company's principal business office. (V.T.I.C. Art. 2.03 (part).)

Source Law

Art. 2.03. . . . Upon such filing the Board may give notice by publication in one or more daily newspapers of this State of a public hearing upon such application; provided that no hearing shall be required in event amendment to charter involves only a stock dividend by means of lawful transfer of surplus to capital or a change of name or a change of locality of the principal business office of said company or a combination of such amendments.

In considering any such application, the Board may hold public hearings and

Revised Law

Sec. 822.158. DETERMINATION ON APPLICATION FOR CHARTER AMENDMENT. (a) Not later than the 60th day after the date the application under Section 822.155 is filed, the commissioner shall determine whether:

- (1) the proposed capital structure of the insurance company meets the requirements of this code;
- (2) the officers, directors, and managing head of the insurance company have sufficient insurance experience, ability, standing, and good record to make success of the company probable;

(3) the applicants are acting in good faith;

(4) if the proposed amendment relates to a diminution of the insurance company's charter powers with respect to the kinds of insurance business in which the company may be engaged, all liabilities incidental to the exercise of the powers to be eliminated have been terminated or wholly reinsured; and

(5) the property involved in an increase of capital or surplus, or both, is:

(A) properly valued; and

(B) in the form authorized by Section 822.204 and Article 2.10, to the extent those provisions apply.

(b) If the commissioner determines by an affirmative finding any of the issues set out by Subsection (a) adversely to the applicants, the commissioner shall reject the application.

(c) If the commissioner does not reject the application under Subsection (b), the commissioner shall approve the application and the amendment shall be filed with the department.

(d) Except as provided by Subsection (e), when an amendment to an insurance company's charter is filed with the department, the amendment is effective.

(e) On approval of a certificate required under Section 822.156 and receipt of a fee in the amount determined under Article 4.07, the commissioner shall issue to the directors a certified copy of an amendment authorizing the issuance of shares of stock without par value that is filed under this section. The amendment is effective on issuance of the certified copy of the amendment. (V.T.I.C. Art. 2.03 (part); Art. 2.07, Sec. 4 (part).)

Source Law

Art. 2.03. . . .

[In considering any such application,] the Board . . . shall within 60 days determine whether or not:

1. The proposed capital structure meets the minimum requirements of this Code;

2. The then officers and directors and managing head have sufficient insurance experience, ability, standing and good

record to render success of the company probable;

3. The applicants are acting in good faith;

4. If an amendment to charter involves a diminution of the company's charter powers with respect to the kinds of insurance business in which it may engage, in the manner prescribed by this Code, that all liabilities incident to the exercise of the powers to be eliminated have been terminated or wholly reinsured;

5. The property involved in any increase of capital or surplus or both is properly valued and is as authorized by Article 2.08 or Article 2.10 of this Code, as same may be applicable.

Should the Board determine any of the above issues adversely to the applicants, it shall reject the application. Otherwise the Board shall approve the application, whereupon such amendment shall be deposited with the Board, and shall become effective.

[Art. 2.07]

Sec. 4. . . . Upon receipt of proper payment, the Board shall furnish a certified copy . . . of the amendment to the directors, and same shall be effective. . . .

Revisor's Note

Section 4, V.T.I.C. Article 2.07, provides that "[u]pon receipt of proper payment, the Board shall furnish a certified copy . . . of the amendment to the directors." The revised law substitutes a reference to a fee in the amount determined under Article 4.07 for the reason stated in the revisor's note to Section 822.061.

[Sections 822.159-822.200 reserved for expansion]

SUBCHAPTER E. CAPITAL, SURPLUS, AND GUARANTY FUND REQUIREMENTS

Revised Law

Sec. 822.201. APPLICABILITY OF CAPITAL AND SURPLUS REQUIREMENTS. The capital and surplus requirements of this chapter apply to each insurance company or other entity, other

than a farm mutual insurance company, authorized to write property and casualty insurance in this state including:

- (1) a county mutual insurance company;
 - (2) a mutual insurance company, other than a mutual life insurance company;
 - (3) a Lloyd's plan; and
 - (4) a reciprocal or interinsurance exchange.
- (V.T.I.C. Art. 2.01, Subsec. (g).)

Source Law

(g) Notwithstanding Subsection (a) of this article, effective January 1, 1992, the capital and surplus requirements imposed under Articles 2.02 and 2.20 of this Code apply to each insurance company or other entity admitted to do business and authorized to write property and casualty insurance in this state other than farm mutual insurance companies, but including county mutual insurance companies, mutual insurance companies other than mutual life insurance companies, Lloyd's plan companies, and reciprocal or interinsurance exchanges.

Revisor's Note

Subsection (g), V.T.I.C. Article 2.01, provides that "effective January 1, 1992, the capital and surplus requirements . . . apply to each insurance company or other entity." The revised law omits the reference to "effective January 1, 1992," because that provision is executed.

Revised Law

Sec. 822.202. FULL COVERAGE AUTOMOBILE INSURANCE; DETERMINATION OF AMOUNTS. Full coverage automobile insurance is one line of casualty insurance for purposes of determining:

- (1) the amount of capital and surplus of a capital stock company under this code;
- (2) the amount of surplus of a mutual insurance company or reciprocal exchange under this code; or
- (3) the amount of the guaranty fund and surplus of a Lloyd's plan under this code. (V.T.I.C. Art. 2.02, Subsec. (a))

(part).)

Source Law

(a) . . .

. . .

3. . . . for the purposes of determining the amount of capital and surplus required under this Code of a capital stock company, or the amount of surplus required of a mutual company, reciprocal exchange, or the amount of guaranty fund and surplus required of a Lloyds, full coverage automobile insurance shall be construed as one line of casualty insurance;

. . .

Revised Law

Sec. 822.203. CAPITAL REQUIRED GENERALLY. To engage in the kinds of insurance business for which an insurance company organized under this chapter holds a certificate of authority, the company must have at least the minimum amount of capital required for a newly incorporated company under Section 822.054. (V.T.I.C. Art. 2.20 (part).)

Source Law

Art. 2.20. [(a) If an insurance company chartered under this chapter or a foreign or alien insurance company authorized to do business in this state and subject to the minimum capital and surplus requirements of this chapter has as of September 1, 1991 less than the minimum capital and surplus required for a newly incorporated company under Article 2.02 of this code, it may continue to transact the kind or kinds of insurance business for which it holds a Texas certificate of authority. However, the insurance company must increase its capital and surplus as required by this article.]

(c) [In addition to increases under Subsection (b) of this article, an insurance company subject to Subsection (a) of this article must increase its minimum capital according to the

following schedule:]

. . .

(10) not later than December 31, 2001, each company subject to this chapter must have at least the minimum capital required by Article 2.02 of this code for a newly incorporated company, notwithstanding any other provision of this code.

Revised Law

Sec. 822.204. FORM OF CAPITAL AND SURPLUS. (a) After incorporation and the issuance of a certificate of authority to an insurance company, the minimum capital stock and surplus of the company may consist only of:

- (1) United States currency;
- (2) bonds of this state;
- (3) bonds or other evidences of indebtedness of the United States the principal and interest of which are guaranteed by the United States;
- (4) bonds or other interest-bearing evidences of indebtedness of a county or municipality of this state; and
- (5) notes secured by first mortgages:
 - (A) on otherwise unencumbered real property in this state the title to which is valid; and
 - (B) the payment of which is insured wholly or partly by the United States.

(b) Not more than 50 percent of the minimum capital stock and minimum surplus of an insurance company may be invested in an investment described by Subsection (a)(5). (V.T.I.C. Art. 2.08.)

Source Law

Art. 2.08. The minimum capital stock and minimum surplus of any such insurance company, except any writing life, health and accident insurance shall, following incorporation and granting of certificate of authority, consist only of the following:

1. Lawful money of the United States; or
2. Bonds of this state; or

3. Bonds or other evidences of indebtedness of the United States of America or any of its agencies when such obligations are guaranteed as to principal and interest by the United States of America; or

4. Notes secured by first mortgages upon unencumbered real estate in this state, the title to which is valid, and the payment of which notes is insured, in whole or in part, by the United States of America or any of its agencies, provided that such investments in such notes shall not exceed one-half (1/2) of the minimum capital stock and minimum surplus of the investing company; or

5. Bonds or other interest-bearing evidences of indebtedness of any counties, cities or other municipalities of this state.

Revisor's Note

(1) V.T.I.C. Article 2.08 refers to the minimum capital and surplus requirements of any insurance company "except any [insurance company] writing life, health and accident insurance." The revised law omits the quoted phrase as unnecessary because it duplicates the provision in V.T.I.C. Article 2.01, revised as Section 822.001, that expressly provides that this chapter does not apply to insurance companies writing life, health, and accident insurance.

(2) Section 4, V.T.I.C. Article 2.08, refers to "the United States of America or any of its agencies." The revised law omits the reference to "or any of its agencies" because, under Section 311.005(9), Government Code (Code Construction Act), "United States" includes an agency of the United States of America. That definition applies to the revised law.

(3) Section 5, V.T.I.C. Article 2.08, refers to "cities or other municipalities of this state." The revised law omits the term "cities" because under the Local Government Code, "city" is included in the meaning of the term "municipality."

Revised Law

Sec. 822.205. UNENCUMBERED SURPLUS OR GUARANTY FUND REQUIREMENTS FOR CERTAIN INSURANCE COMPANIES. (a) This section applies only to an insurance company that:

- (1) writes insurance only in this state; and
- (2) is not required by law to have capital stock.

(b) Notwithstanding any other provision of this subchapter other than Sections 822.212(b) and (c), an insurance company must have a minimum amount of unencumbered surplus or a minimum amount of guaranty fund and unencumbered surplus equal to the greater of:

(1) the amount of unencumbered surplus or the amount of guaranty fund and surplus, as appropriate, the company was required to have on August 31, 1991; or

(2) one-third of the company's net written premium for the preceding 12 months after deducting:

- (A) lawfully ceded reinsurance; and
- (B) any policy fees not ceded to reinsurers.

(V.T.I.C. Art. 2.20, Subsec. (f).)

Source Law

(f) Notwithstanding any other provision of this code other than Subsection (b) of this article, for insurers that write business only in this state and that are not required by law to have capital stock, the minimum free surplus or guaranty fund and free surplus required shall be the greater of that required of the insurer immediately prior to the effective date of this article or one-third of the net written premium of the insurer for the preceding 12 months after deducting:

- (1) lawfully ceded reinsurance; and
- (2) policy fees, if any, not ceded to reinsurers.

Revisor's Note

(1) Subsection (f), V.T.I.C. Article 2.20, refers to the "free surplus" and the "free surplus or guaranty fund" of certain insurance companies. The revised law substitutes "unencumbered

surplus" for "free surplus" because, in context, the phrases are synonymous and the phrase "unencumbered surplus" is more consistent with modern usage.

(2) Subsection (f), V.T.I.C. Article 2.20, provides that the measurement of the minimum amount of unencumbered surplus or the minimum amount of guaranty fund and unencumbered surplus required of certain insurance companies must be determined by the greater of two amounts, one of which is the amount of unencumbered surplus or the amount of guaranty fund and unencumbered surplus "required of the insurer immediately prior to the effective date of this article." Although the quoted phrase refers to the effective date of Article 2.20, the phrase was added to that article by Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991. The apparent intent of the legislature in enacting the language contained in the quoted phrase was to refer to the effective date of that amendment, which is September 1, 1991. As a result, the revised law substitutes "August 31, 1991," for the phrase "immediately prior to the effective date of this article."

Revised Law

Sec. 822.206. REPURCHASE OF CAPITAL STOCK BY TENDER OFFER OR PRIVATE TRANSACTION. (a) An insurance company may, on prior approval of the department, purchase outstanding shares of the company's capital stock in accordance with the Texas Business Corporation Act either by making a tender offer or by entering into a negotiated private transaction.

- (b) The application for approval under Subsection (a) must:
- (1) state the number of shares offered;
 - (2) describe the shares;
 - (3) contain any pertinent information regarding the value of the shares, including:
 - (A) the price offered by the company for the shares;
 - (B) the book value of the shares; and
 - (C) the market value of the shares if a market exists for those shares; and

(4) demonstrate that the shares will be purchased using uncommitted earned surplus.

(c) Before filing the application the insurance company must present a copy of the application to the seller of the shares.

(d) The commissioner shall approve the application promptly if:

(1) the price offered by the insurance company for the shares appears to be a reasonably fair price; and

(2) the application complies with the requirements of this section and the Texas Business Corporation Act. (V.T.I.C. Art. 2.07, Sec. 7(a).)

Source Law

Sec. 7. (a) Any such company desiring to purchase, either by tender offer or through negotiated private transaction, issued and outstanding shares of the capital stock of such company may purchase said shares in the name of such company, in accordance with the provisions of the Texas Business Corporation Act, provided prior approval is first obtained from the State Board of Insurance. Application for approval shall specify the number of shares offered, their description, the price offered by the company, the book value of said shares, their market value if a market exists, and any other pertinent information regarding the value of said shares and show that said shares will be purchased out of uncommitted earned surplus. A copy of said application shall be given to the seller prior to the filing of said application with the State Board of Insurance. Said application shall be promptly approved by the State Board of Insurance if the application appears to involve a reasonably fair price and complies with this Article and the Texas Business Corporation Act.

Revised Law

Sec. 822.207. REPURCHASE OF CAPITAL STOCK ON OPEN MARKET.

(a) On prior approval of the commissioner, an insurance company, the capital stock of which is listed on a national securities exchange, may purchase from time to time outstanding shares of the company's capital stock on the open market. The shares must be purchased:

(1) in the name of the company for its own account;
and

(2) in accordance with the Texas Business Corporation Act.

(b) The application for approval under Subsection (a) must:

(1) state the maximum number of shares to be purchased;

(2) state the maximum period, not to exceed 180 days, during which the purchase will be made;

(3) describe the shares;

(4) contain a commitment that the company will not pay a price for the shares to be purchased that is greater than an amount equal to the average of the bid price and the asked price at the time of the purchase plus a standard broker's commission;

(5) contain any pertinent information relating to the value of the shares, including the book value of the shares; and

(6) demonstrate that the shares will be purchased using uncommitted earned surplus.

(c) The commissioner shall approve the application promptly if the application complies with the requirements of this section and the Texas Business Corporation Act. (V.T.I.C. Art. 2.07, Sec. 7(b).)

Source Law

(b) Any such company, the shares of whose capital stock are listed on a national securities exchange and which desires to purchase in its own name and for its own account issued and outstanding shares of such capital stock by means of purchases from time to time on the open market may do so in accordance with

the provisions of the Texas Business Corporation Act, provided prior approval is first obtained from the State Board of Insurance. Application for approval shall state the maximum number of shares which will be so purchased, the maximum period of time during which such purchases of shares will be made (not to exceed one hundred eighty days), the description of such shares, a commitment by the company that it will not pay for any such shares a price in excess of the mean between the bid price and the asked price at the time of such purchase plus a standard broker's commission, the book value of said shares, and any other pertinent information regarding the value of said shares and show that said shares will be purchased out of uncommitted earned surplus. Said application shall be promptly approved by the State Board of Insurance if the said application complies with this Article and the Texas Business Corporation Act.

Revised Law

Sec. 822.208. APPLICATION FOR REPURCHASE OF COMPANY'S SHARES SUBJECT TO OTHER LAW. An application filed by an insurance company under Section 822.206 or 822.207 is subject to the substantive requirements for the approval of payment of an extraordinary dividend under Chapter 823. (V.T.I.C. Art. 2.07, Sec. 7(d).)

Source Law

(d) An application for purchase of an insurer's own shares under the provisions of this article shall be deemed to be an tantamount to an application for an extraordinary dividend under the provisions of said Article 21.49-1 of the Insurance Code and the application for such purchase shall be subject to and limited by the substantive requirements for approval of payment of an extraordinary dividend under said Article 21.49-1 of the Insurance Code as the same exists or may be amended in the future.

Revisor's Note

(1) Section 7(d), V.T.I.C. Article 2.07, provides that an application for the purchase of an insurer's own shares under that article "shall be deemed to be tantamount to an application for an extraordinary dividend under the provisions of said Article 21.49-1 of the Insurance Code and the application for such purchase shall be subject to and limited by the substantive requirements for approval of payment of an extraordinary dividend under said Article 21.49-1 of the Insurance Code." The revised law omits as unnecessary the portion of the quoted language comparing the application to an application under V.T.I.C. Article 21.49-1 as unnecessary in light of the substantive requirement that the application is subject to the requirements of Article 21.49-1 regarding the approval of payment of extraordinary dividends under that article.

(2) Section 7(d), V.T.I.C. Article 2.07, refers to "Article 21.49-1 of the Insurance Code as the same exists or may be amended in the future." V.T.I.C. Article 21.49-1 is revised as Chapter 823, and the revised law is drafted accordingly. The revised law omits as unnecessary the phrase "as the same exists or may be amended in the future" for the reason stated in the revisor's note to Section 822.003.

Revised Law

Sec. 822.209. REINVESTMENT OF CAPITAL STOCK. An insurance company may, as circumstances require, exchange and reinvest its capital stock in like securities. (V.T.I.C. Art. 2.09.)

Source Law

Art. 2.09. Any such company may exchange and re-invest its capital stock in like securities, as occasion may require.

Revised Law

Sec. 822.210. COMMISSIONER MAY REQUIRE LARGER CAPITAL AND SURPLUS AMOUNTS. (a) The commissioner by rule or guideline may require an insurance company organized under this chapter to maintain capital and surplus in amounts that exceed the minimum

amounts required by this chapter because of:

- (1) the nature and kind of risks the company underwrites or reinsures;
- (2) the premium volume of risks the company underwrites or reinsures;
- (3) the composition, quality, duration, or liquidity of the company's investments;
- (4) fluctuations in the market value of securities the company holds; or
- (5) the adequacy of the company's reserves.

(b) A rule adopted under Subsection (a) must be designed to ensure the financial solvency of an insurance company for the protection of policyholders.

(c) An insurance company that, after notifying the commissioner, ceases to write or assume business continues to be subject to this section. (V.T.I.C. Art. 2.02, Subsec. (b); Art. 2.20, Subsecs. (d), (e) (part).)

Source Law

[Art. 2.02]

(b) The board may adopt rules, regulations, and guidelines, from time to time, requiring any company incorporated under this article, and any alien or foreign insurer admitted in this state to do the types of business authorized by this Chapter, to maintain capital and surplus levels in excess of the statutory levels required by this article based upon any of the following factors:

1. the nature and type of risks a company underwrites or reinsures;
2. the premium volume of risks a company underwrites or reinsures;
3. the composition, quality, duration, or liquidity of a company's investment portfolio;
4. fluctuations in the market value of securities a company holds; or
5. the adequacy of a company's reserves.

The rules and regulations, adopted under this subsection shall be designed to assure the financial solvency of companies for the protection of policyholders.

[Art. 2.20]

(d) The board may adopt rules, regulations, and guidelines, from time to time, requiring any company subject to this article to maintain capital and surplus levels in excess of the minimums required by Article 2.02 of this code for a newly incorporated company and in excess of the levels required in the schedule established under Subsection (c) of this article, based upon any of the following factors:

(1) the nature and type of risks a company underwrites or reinsures;

(2) the premium volume of risks a company underwrites or reinsures;

(3) the composition, quality, duration, or liquidity of a company's investment portfolio;

(4) fluctuations in the market value of securities a company holds; or

(5) the adequacy of a company's reserves.

The rules adopted under this subsection shall be designed to assure the financial solvency of companies for the protection of policyholders.

(e) If an insurance company that is subject to the minimum capital and surplus requirements of either Article 2.02 of this code or this article ceases to write or assume any business and so notifies the Commissioner of Insurance, the insurance company . . . shall be subject to the risk capital requirements of Subsection (d) of this article.

Revisor's Note

(1) Subsection (b), V.T.I.C. Article 2.02, and Subsection (d), V.T.I.C. Article 2.20, refer to "rules, regulations, and guidelines." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code

(Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

(2) Subsection (b), V.T.I.C. Article 2.02, refers to the application of that subsection to "any alien or foreign insurer admitted in this state to do the types of business authorized by this Chapter." The revised law omits the quoted language as unnecessary because it duplicates V.T.I.C. Article 21.44, which is revised in Chapter 982.

Revised Law

Sec. 822.211. ACTION OF COMMISSIONER WHEN CAPITAL OR SURPLUS REQUIREMENTS NOT SATISFIED. If an insurance company does not comply with the capital and surplus requirements of this chapter, the commissioner may enter an order prohibiting the company from writing new business and may:

- (1) place the company under state supervision or conservatorship;
- (2) declare the company to be in a hazardous condition as provided by Article 1.32;
- (3) declare the company to be impaired as provided by Section 5, Article 1.10; or
- (4) apply to the company any other applicable sanction provided by this code. (V.T.I.C. Art. 2.02, Subsec. (c).)

Source Law

(c) The commissioner may order an insurer subject to the capital and surplus requirements of either this article or of Article 2.20 of this code that fails to comply with such article to cease writing new business, and the commissioner may also:

1. place the insurer under state supervision or conservatorship;
2. determine the insurer to be in a hazardous condition as provided by Article 1.32 of this code;
3. determine the insurer to be impaired as provided by Section 5 of Article 1.10 of this code; or
4. make the insurer subject to any other applicable sanctions provided by this code.

Revised Law

Sec. 822.212. INCREASE OF CAPITAL AND SURPLUS. (a)
Notwithstanding Section 822.203, to engage in the kinds of insurance business for which an insurance company organized under this chapter holds a certificate of authority in this state, an insurance company organized under this chapter that on September 1, 1991, had less than the minimum amount of capital and surplus required for a newly incorporated company under Section 822.054 must:

(1) not later than December 31, 2000, have increased the amount of its capital by at least 90 percent of the difference between the amount of minimum capital required for a newly incorporated company under Section 822.054 and the amount of the company's capital on December 31, 1991; and

(2) not later than December 31, 2001, have at least the minimum amount of capital required under Section 822.054 for a newly incorporated company.

(b) An insurance company that on September 1, 1991, had less than the minimum amount of capital and surplus required for a newly incorporated company under Section 822.054 shall immediately increase the amount of its capital and surplus to an amount equal to the required amount of capital and surplus under Section 822.054 if there is:

(1) a change in the control of at least 50 percent of the voting securities of the insurance company;

(2) a change in the control of at least 50 percent of the voting securities of a holding company controlling the insurance company; or

(3) a change in control of at least 50 percent by any other method of control if the insurance company or holding company is not controlled by voting securities.

(c) For purposes of Subsection (b), a transfer of ownership that occurs because of death, regardless of whether the decedent dies testate or intestate, may not be considered a change in the control of an insurance company or holding company if ownership is transferred solely to one or more individuals each of whom

would be an heir of the decedent if the decedent had died intestate.

(d) An insurance company that, after notifying the commissioner, ceases to write or assume business is not required to comply with this section. If the company resumes writing business at a later date, the company shall comply with this section on the date the company resumes business. (V.T.I.C. Art. 2.20, Subsecs. (a), (b), (c) (part), (e) (part).)

Source Law

(a) If an insurance company chartered under this chapter or a foreign or alien insurance company authorized to do business in this state and subject to the minimum capital and surplus requirements of this chapter has as of September 1, 1991 less than the minimum capital and surplus required for a newly incorporated company under Article 2.02 of this code, it may continue to transact the kind or kinds of insurance business for which it holds a Texas certificate of authority. However, the insurance company must increase its capital and surplus as required by this article.

(b) The insurance company must increase its capital and surplus to the minimum capital and surplus required under Article 2.02 of this code immediately after any change of control of the insurance company or change of control of any holding company controlling the insurance company if, after September 1, 1991, there is a change of control of at least 50 percent of the voting securities of the insurance company or holding company or other means of control if the insurance company or holding company is not controlled by voting securities. For the purposes of this article, however, a transfer of ownership that occurs because of death, regardless of whether the decedent died testate or intestate, may not be considered a change of control of an insurance company or change of control of a holding company, if ownership is transferred solely to one or more natural persons each of whom would be an heir of the decedent if the decedent had died intestate.

(c) In addition to increases under Subsection (b) of this article, an insurance company subject to Subsection (a) of this article must increase its minimum capital according to the following schedule:

. . .

(9) not later than December 31, 2000, the insurance company's capital must be increased by at least 90 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991; and

(10) not later than December 31, 2001, each company subject to this chapter must have at least the minimum capital required by Article 2.02 of this code for a newly incorporated company, notwithstanding any other provision of this code.

(e) If an insurance company that is subject to the minimum capital and surplus requirements of either Article 2.02 of this code or this article ceases to write or assume any business and so notifies the Commissioner of Insurance, the insurance company shall not be required thereafter to increase the company's required minimum capital in accordance with Subsection (c) of this article but If the company should thereafter resume writing any business, the company shall be subject to and comply with Subsection (c) of this article at the amount of capital required as of such resumption of writing date.

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 2.20, refers to "a foreign or alien insurance company authorized to do business in this state and subject to the minimum capital and surplus requirements of this chapter." The revised law omits the quoted language for the reason stated in Revisor's Note (2) to Section 822.210.

(2) Subsection (c), V.T.I.C. Article 2.20, requires certain insurance companies that do not comply with capital and surplus requirements on September 1, 1991, to continue to write insurance

in this state until December 31, 2000, as long as the companies increase their capital on an annual basis in scheduled increments. The revised law omits Subdivisions (1)-(8) of Subsection (c) because those provisions are executed. The omitted law reads:

[(c) In addition to increases under Subsection (b) of this article, an insurance company subject to Subsection (a) of this article must increase its minimum capital according to the following schedule:]

(1) not later than December 31, 1992, the insurance company's capital must be increased by at least 10 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(2) not later than December 31, 1993, the insurance company's capital must be increased by at least 20 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(3) not later than December 31, 1994, the insurance company's capital must be increased by at least 30 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(4) not later than December 31, 1995, the insurance company's capital must be increased by at least 40 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(5) not later than December 31, 1996, the insurance company's capital must be increased by at least 50 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(6) not later than December 31, 1997, the insurance company's capital must be increased by at least 60 percent of the

difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(7) not later than December 31, 1998, the insurance company's capital must be increased by at least 70 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(8) not later than December 31, 1999, the insurance company's capital must be increased by at least 80 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

. . .

Revisor's Note
(End of Chapter)

(1) Sections 1(d) and 6, V.T.I.C. Article 2.07, provide that the privileges and powers conferred by that article are cumulative of other powers conferred by law. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless the statutes are inconsistent. The revised law omits the provisions as unnecessary because the general principle applies to the provision. The omitted law reads:
[Sec. 1]

(d) The privileges and powers conferred by this Article shall be in addition to any and all powers and privileges conferred by any other law or laws, and not in restriction or limitation of any of the powers now permitted to such companies; provided, however

Sec. 6. The privileges and powers conferred by this article shall be in addition to any and all powers and privileges conferred by any other law or laws, and not in restriction or

limitation of any of the powers now permitted to such companies;
provided, however

(2) Sections 1(d) and 6, V.T.I.C. Article 2.07, provide that life, health, and accident insurance companies operating under Chapter 3 of this code must be subject to Chapter 3 instead of Article 2.07. The revised law omits the provisions as unnecessary because V.T.I.C. Article 2.01(a), revised in pertinent part as Section 822.001, expressly provides that Chapter 2, revised in pertinent part as this chapter, does not apply to life, health, and accident insurance companies. The omitted law reads:

[Sec. 1]

(d) . . . life, health, or accident insurance companies operating under Chapter 3 of this Code shall not utilize the provisions of this Article but shall comply with the provisions of Chapter 3 of this Code as amended.

Sec. 6. . . . life, health or accident insurance companies operating under Chapter 3 of this Code shall not utilize the provisions of this Article but shall comply with the provisions of Chapter 3 of this Code as amended.

CHAPTER 823. INSURANCE HOLDING COMPANY SYSTEMS

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